

**Attachment 2-B** (excerpts from Oregon laws and regulations)

- Oregon Revised Statutes Chapter 634:  
[https://www.oregonlegislature.gov/bills\\_laws/ors/ors634.html](https://www.oregonlegislature.gov/bills_laws/ors/ors634.html)
- Oregon Administrative Rule Chapter 603, Division 057:  
<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=2734>
- Oregon Revised Statutes Chapter 561:  
[https://www.oregonlegislature.gov/bills\\_laws/ors/ors561.html](https://www.oregonlegislature.gov/bills_laws/ors/ors561.html)
- Oregon Constitution, Article 1, Section 9  
<https://sos.oregon.gov/blue-book/Pages/state-constitution.aspx>

*Note: Proposed revisions to statute and rule are indicated in bold (addition) and strikethrough (subtraction) below.*

634.005 Short title; policy statement. The purpose of this chapter, which shall be known as the State Pesticide Control Act and shall be enforced by the State Department of Agriculture, is to regulate in the public interest the formulation, distribution, storage, transportation, application and use of pesticides. Many materials have been discovered or synthesized which are necessary and valuable for the control of insects, plant diseases and weeds. Many more pesticides will be discovered and needed. Such materials, however, may injure health, property, wildlife or environment by being distributed, stored, transported, applied or used in an improper or careless manner. The pesticide industry of this state has achieved and maintained high standards in its formulation and use of pesticides while at the same time experiencing a minimum of injury to persons, property or the environment. Currently updating the law to maintain this achievement and to consider future new pesticides and problems is necessary for the protection of persons, property, wildlife and environment of this state. [Formerly 634.012]

634.006 Definitions. As used in this chapter unless the context requires otherwise:

(1) "Antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

(2) "Brand" or "trademark" means any word, name, symbol or any combination thereof adopted or used by a person to identify pesticides manufactured, compounded, delivered, distributed, sold or offered for sale in this state and to distinguish them from pesticides manufactured, compounded, delivered, distributed, sold or offered for sale by others.

(3) "Department" means the State Department of Agriculture.

(4) "Device" means any instrument or contrivance containing pesticides or other chemicals intended for trapping, destroying, repelling or mitigating insects or rodents or destroying, repelling or mitigating fungi, nematodes or such other pests as may be designated by the department, but does not include equipment used for the application of pesticides or other chemicals when sold separately from such pesticides or chemicals.

(5) "Highly toxic" means a pesticide or device determined by the department to be capable of causing severe injury, disease or death to human beings.

(6) "Landowner" means a person:

(a) Owning three acres or more within a proposed protected area; and

(b) In the case of multiple ownership of land:

(A) Whose interest is greater than an undivided one-half interest in the land; or

(B) Who holds an authorization in writing from one or more of the other owners whose interest, when added to the interest of the person, are greater than an undivided one-half interest in the land.

(7) "Person" means:

(a) A person as defined in ORS 174.100;

(b) A public body as defined in ORS 174.109; and

(c) The federal government or any of its agencies.

(8) "Pesticide" includes:

- (a) "Defoliant" which means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant with or without causing abscission;
  - (b) "Desiccant" which means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;
  - (c) "Fungicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus;
  - (d) "Herbicide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed;
  - (e) "Insecticide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever;
  - (f) "Nematocide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes;
  - (g) "Plant regulator" which means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise alter the behavior of ornamental or crop plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments; or
  - (h) Any substance, or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the department declares to be a pest, which may infest or be detrimental to vegetation, humans, animals, or be present in any environment thereof.
- (9) "Pesticide applicator" or "applicator" means an individual who:
- (a) **(A) Is using, spraying or applying restricted use or highly toxic pesticides for others; or**
  - (B) Is spraying or applying pesticides for others;**
  - (b) Is authorized to work for and is employed by a pesticide operator; and
  - (c) Is in direct charge of or supervises the spraying or other ~~use~~**application** of pesticides or operates, uses, drives or physically directs propulsion of equipment, apparatus or machinery during the spraying or other application of pesticides, either on the ground or, if certified under ORS 634.128, by aircraft
- (10) "Pesticide consultant" means a person who offers or supplies technical advice, supervision, aid or recommendations to the user of pesticides classified by the department as restricted-use or highly toxic pesticides, whether licensed as a pesticide dealer or not.
- (11) "Pesticide dealer" means a person who sells, offers for sale, handles, displays or distributes any pesticide classified by the department as a restricted-use or highly toxic pesticide.
- (12) "Pesticide equipment" means any equipment, machinery or device used in the actual application of pesticides, including aircraft and ground spraying equipment.
- (13) "Pesticide operator" means a person who owns or operates a business engaged in the application of pesticides upon the land or property of another.
- (14) "Pesticide trainee" means an individual who:
- (a) Is employed by a pesticide operator; and

(b) Is working and engaged in a training program under special certificate to qualify as a pesticide applicator.

(15) "Private applicator" means an individual who uses or supervises the use of any pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of producing agricultural commodities or forest crops on land owned or leased by the individual or the employer of the individual.

(16) "Professed standard of quality" means a plain and true statement of the name and percentage of each active ingredient and the total percentage of all inert ingredients contained in any pesticide.

(17) "Protected area" means an area established under the provisions of this chapter to prohibit or restrict the application of pesticides.

(18) "Public applicator" means an individual who is an employee of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and telecommunications utilities and who performs or carries out the work, duties or responsibilities of a pesticide applicator.

(19) "Public trainee" means an individual who is an employee of the State of Oregon or its agencies, counties, cities, municipal corporations, other governmental bodies or subdivisions thereof, irrigation districts, drainage districts and public utilities and telecommunications utility and who performs or carries out the work, duties or responsibilities of a pesticide trainee.

(20) "Registrant" means a person registering any pesticide pursuant to this chapter.

(21) "Restricted area" means an area established under the provisions of this chapter to restrict, but not prohibit, the application of pesticides.

(22) "Restricted-use pesticide" means any pesticide or device that the department has found and determined to be so injurious or detrimental to humans, pollinating insects, bees, animals, crops, wildlife, land or environment, other than the pests it is intended to prevent, destroy, control or mitigate, that additional restrictions are required.

(23) "Weed" means any plant that grows where not wanted. [1973 c.341 §3; 1987 c.447 §134; 2015 c.833 §12]

634.016 Registration of pesticides and application devices; fee; contents of application; restriction on pesticide distribution and use; exemptions. (1) Every pesticide, including each formula or formulation, manufactured, compounded, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the State Department of Agriculture.

(2) Every device manufactured, delivered, distributed, sold, offered or exposed for sale in this state shall be registered each year with the department.

(3) The registration shall be made by the manufacturer or a distributor of the pesticide.

(4) The application for registration shall include:

(a) The name and address of the registrant.

(b) The name and address of the manufacturer if different than the registrant.

(c) The brand name or trademark of the pesticide.



(d) A specimen or facsimile of the label of each pesticide, and each formula or formulation, for which registration is sought, except for annual renewals of the registration when the label remains unchanged.

(e) The correct name and total percentage of each active ingredient.

(f) The total percentage of inert ingredients.

(5) The application for registration shall be accompanied by a registration fee to be established by the department for each pesticide and each formula or formulation. The registration fee may not exceed \$400 for each such pesticide, or each formula or formulation.

(6) The department, at the time of application for registration of any pesticide or after a declaration of a ground water management area under ORS 468B.180 may:

(a) Restrict or limit the manufacture, delivery, distribution, sale or use of any pesticide in this state.

(b) Refuse to register any pesticide that is highly toxic for which there is no effective antidote under the conditions of use for which such pesticide is intended or recommended.

(c) Refuse to register any pesticide for use on a crop for which no finite tolerances for residues of such pesticide have been established by either the department or the federal government.

(d) In restricting the purposes for which pesticides may be manufactured, delivered, distributed, sold or used, or in refusing to register any pesticide, give consideration to:

(A) The damage to health or life of humans or animals, or detriment to the environment, that might result from the distribution and use of such pesticide.

(B) Authoritative findings and recommendations of agencies of the federal government and of any advisory committee or group established under ORS 634.306 (10).

(C) The existence of an effective antidote under known conditions of use for which the material is intended or recommended.

(D) Residual or delayed toxicity of the material.

(E) The extent to which a pesticide or its carrying agent simulates by appearance and may be mistaken for human food or animal feed.

(7) The provisions of this section shall not, except as provided herein, apply to:

(a) The use and purchase of pesticides by the federal government or its agencies.

(b) The sale or exchange of pesticides between manufacturers and distributors.

(c) Drugs, chemicals or other preparations sold or intended for medicinal or toilet purposes or for use in the arts or sciences.

(d) Common carriers, contract carriers or public warehousemen delivering or storing pesticides, except as provided in ORS 634.322. [1973 c.341 §7; 1975 c.304 §9; 1989 c.709 §3; 1989 c.833 §66; 2007 c.162 §1; 2015 c.833 §18]

634.020 [Repealed by 1953 c.118 §2]

634.022 Exemption from registration for experimental pesticides; approval required for use of experimental pesticides; applicability of law. (1) The provisions of ORS 634.016 are not applicable to pesticides used only for experimental or research purposes. Such pesticides shall be conspicuously labeled "For experimental purposes

only and not for sale” in addition to the labeling requirements of ORS 634.026, except that they need not be labeled with directions for use or the professed standard of quality.

(2)(a) Subject to the exemptions set forth in paragraph (b) of this subsection, before any pesticide can be used for experimental or research purposes a person proposing to use such pesticides shall obtain approval of the State Department of Agriculture. Application for such approval shall contain such information as may be required by the department, including the location and size of the plot on which the experiment or research is to be carried out, the nature of the pesticide to be utilized, the person responsible for such activities and the intended disposition of any crops grown upon the experimental or research plot.

(b) The provisions of paragraph (a) of this subsection are not applicable to:

(A) Federal or state agencies.

(B) Experiments or research carried on in greenhouses.

(3) If any person uses pesticides for experimental purposes as provided by this section contrary to the instructions and approval issued by the department, the department may immediately revoke such approval and refuse to issue its approval to such persons on future applications. [1973 c.341 §9; 1995 c.79 §324]

634.026 Pesticide labeling requirements; highly toxic pesticides; applicability of law. (1) If not otherwise required or prescribed by federal law or rule, each package or container of every pesticide shall be labeled with:

(a) The name and address of the manufacturer or person for whom it was manufactured.

(b) The brand name or trademark under which the material is sold.

(c) The professed standard of quality of the material.

(d) The net weight or volume of the contents.

(e) Adequate and necessary directions for its proper and intended use.

(2) In addition to the information required by subsection (1) of this section, any pesticide which is highly toxic shall be labeled with:

(a) A sign of a skull and crossbones.

(b) The word “poison” in red on the package printed on a background of contrasting color.

(c) A poison antidote for the material, if any.

(3) The provisions of subsection (2) of this section shall not apply to bleaching powder or chloride of lime. [1973 c.341 §10]

634.030 [Repealed by 1953 c.118 §2]

634.032 When pesticide is misbranded. Pesticides shall be deemed misbranded if:

(1) The package or container of such materials bears any false or misleading statement.

(2) The container or package of such materials is not labeled as required by ORS 634.026. [1973 c.341 §11]

634.036 When pesticide is adulterated. A pesticide shall be deemed to be adulterated if:

(1) It is a pesticide other than a herbicide, defoliant or desiccant, is intended for use on vegetation and contains any substance which is injurious to such vegetation when used as directed under normal growing conditions.

(2) The strength or purity of the pesticide is below the purported or professed standard of quality as expressed in its labeling, or any substance has been substituted wholly or in part for any ingredient of the pesticide, or any valuable constituent thereof has been omitted wholly or in part.

(3) The contents of the package or container of pesticide do not meet their purported standard of quality in any other manner.

(4) The contents of the package or container represented to be a pesticide are not definitely effective for the purpose for which recommended. [1973 c.341 §12]

634.040 [Repealed by 1953 c.118 §2]

634.042 Unsafe use of certain pesticides on raw agricultural commodities; tolerances and exemptions; applicability to fertilizers, agricultural minerals and lime mix. (1) Any poisonous or deleterious pesticide or any pesticide which, in the opinion of the State Department of Agriculture, is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as safe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purposes of the application of ORS 616.235 (1)(b), unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed by regulation promulgated by the department and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed; or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from regulation promulgated by the department.

(2) While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of ORS 616.235 (1)(a), provided such pesticide chemical or the use of such pesticide chemical is in compliance with the law and regulations promulgated thereunder.

(3) In a fertilizer, agricultural minerals, agricultural amendment or lime mix in which a pesticide is contained, all applicable provisions of this chapter must be complied with. In lieu of the requirements of ORS 634.026 (1)(c), the label or invoice on a certain mix may show the name and amount of the actual pesticide, together with the total amount of the entire mixture, including the amount of actual pesticide, to be applied to each acre. [1973 c.341 §13; 1979 c.29 §2; 1995 c.79 §325]

634.045 Avoidance of adverse effects on pollinating insects. (1)(a) Oregon State University, in consultation with the State Department of Agriculture, shall develop educational materials regarding the best practices for avoiding adverse effects from pesticides on populations of bees and other pollinating insects.

(b) The educational materials must include, but need not be limited to, measures that pesticide applicators and pesticide trainees can take to protect honeybees and bumblebees.

(c) The university and the department shall design the requirements to ensure that any pesticide applicator applying or supervising the application of a pesticide is knowledgeable regarding alternatives to, the appropriateness of, and precautions for pesticide use that may be injurious to the health of bees and other pollinating insects.

(d) The department shall make the educational materials described in this section a part of the education required for taking the pesticide applicator licensing examination under ORS 634.122.

(2) Oregon State University, in consultation with the State Department of Agriculture, shall develop a pollinator health outreach and education plan to educate the public regarding the best practices for avoiding adverse effects from pesticides on populations of bees and other pollinating insects. The plan shall include:

(a) Educational materials that are appropriate and effective for a broad audience, including, but not limited to, pesticide applicators, consultants, dealers, operators and trainees and private applicators, as those terms are defined in ORS 634.006, and members of the public; and

(b) A communication strategy for dissemination of educational materials using media sources, state agencies, associations and organizations.

(3) The State Department of Agriculture shall develop a bee incident reporting system to facilitate public reporting of incidents related to pollinator health to the department.

(4) Oregon State University, in consultation with the State Department of Agriculture, shall develop a pesticide use safety plan to educate the public regarding best practices in the use of pesticides. The plan shall include:

(a) Educational materials that are appropriate and effective for a broad audience, including, but not limited to, pesticide applicators, consultants, dealers, operators and trainees and private applicators, as those terms are defined in ORS 634.006, and members of the public; and

(b) A communication strategy for dissemination of educational materials using media sources, state agencies, associations and organizations. [2014 c.40 §1; 2015 c.744 §1]

Note: 634.045 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 634 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

634.048 Website information regarding pesticides. The State Department of Agriculture shall post information regarding pesticides on a department website that is available for access by the public without charge. The department shall indicate on the website those pesticides and devices that the department has listed under ORS 634.316 as highly toxic or restricted-use pesticides or devices. [2015 c.833 §17]

634.050 [Repealed by 1953 c.118 §2]

## STATEWIDE REGULATION OF PESTICIDES

634.055 Legislative findings. The Legislative Assembly hereby determines that the citizens of this state benefit from a system of safe, effective and scientifically sound pesticide regulation. The Legislative Assembly further finds that a uniform, statewide system of pesticide regulation that is consistent, coordinated and comports with both federal and state technical expertise is essential to the public health, safety and welfare and that local regulation of pesticides does not materially assist in achieving these benefits. [1996 c.10 §4 (enacted in lieu of 634.007)]

634.057 State preemption of local pesticide regulation. No city, town, county or other political subdivision of this state shall adopt or enforce any ordinance, rule or regulation regarding pesticide sale or use, including but not limited to:

- (1) Labeling;
- (2) Registration;
- (3) Notification of use;
- (4) Advertising and marketing;
- (5) Distribution;
- (6) Applicator training and certification;
- (7) Licensing;
- (8) Transportation;
- (9) Packaging;
- (10) Storage;
- (11) Disclosure of confidential information; or
- (12) Product composition. [1996 c.10 §6 (enacted in lieu of 634.009)]

634.060 Actions allowed by city, town, county or other political subdivision. Notwithstanding ORS 634.057, a city, town, county or other political subdivision of this state may adopt a policy regarding the use of pesticides on property owned by the city, town, county or other political subdivision adopting the policy. [1996 c.10 §8 (enacted in lieu of 634.011)]

634.063 Exceptions to state preemption of pesticide regulation. Nothing in ORS 634.057 shall limit the authority of a city, town, county or other political subdivision of this state to adopt or enforce a local ordinance, rule or regulation strictly necessary to comply with:

- (1) The Uniform Building Code published by the International Conference of Building Officials, as amended and adopted by the Director of the Department of Consumer and Business Services;
- (2) A uniform fire code; or
- (3) Any requirement of a state or federal statute or regulation pertaining to pesticides. [1996 c.10 §10 (enacted in lieu of 634.013)]

634.065 Department consideration of concerns raised by city, town, county or political subdivision. In administering this chapter, the State Department of Agriculture shall consider any concern raised by a city, town, county or other political subdivision of

the state regarding the regulation of pesticides. [1996 c.10 §12 (enacted in lieu of 634.015)]

634.106 Applicability of ORS 634.112 to 634.126 and 634.146. ORS 634.112 to 634.126 and 634.146 shall not apply to:

(1) Manufacturers of materials engaged in research or experimental work on pesticides.

(2) Persons engaged in the business of a pesticide operator or applicator only in the application of any pollenicide.

(3) Persons licensed as veterinarians under ORS chapter 686 who are engaged in the practice of veterinary medicine within the scope of their veterinary medicine practice and employees of licensed veterinarians when acting within the scope of their employment.

(4) A farmer or forestland owner applying pesticides, other than restricted-use pesticides, by use of equipment of the farmer or forestland owner for others on an occasional basis not amounting to a principal or regular occupation, if the farmer does not publicly hold out as a pesticide applicator and if the pesticides that are applied are furnished by the owner of the land on which such pesticides are applied.

(5) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides but whose main or principal work or business is the maintenance of small or home lawns, shrubs or gardens.

(6) Persons who do not advertise or publicly hold themselves out as being in the business of applying pesticides and whose principal activity or business as related to pesticides is selling pesticides or selling or leasing equipment.

(7) Railroads, to the extent that the application of pesticides is by their regular employees, on land or property under their ownership, supervision, control or jurisdiction, except that if power-operated spray equipment is used for applying volatile herbicides, the application shall be under the direct supervision of a licensed public applicator. [1973 c.341 §22; 1995 c.360 §1; 2001 c.307 §1]

634.112 Renewal of licenses or certificates; delinquency. (1) Except as provided in ORS 634.142 (2), any license or certificate issued or required of a pesticide consultant, dealer, operator, applicator, private applicator or trainee by this chapter shall expire on December 31 following issuance or on such date as may be specified by rule of the State Department of Agriculture. At least 30 days prior to the expiration date, the department shall by mail notify each person holding a license or certificate of the expiration date thereof.

(2) Applications for all licenses or certificates required of a pesticide consultant, dealer, operator, applicator, private applicator or trainee, or renewal thereof, shall be made to the department on forms prescribed by the department and accompanied by the prescribed fee.

(3) All such licenses or certificates are personal to the applicant and may not be transferred to any other person.

(4) Nothing in this chapter shall be construed as requiring a person, helping or assisting in the application of pesticides by a licensed pesticide applicator or certified private applicator or the pesticide application business through the performance of manual labor only, to obtain a license or certificate, if the actual application of pesticides is made by:

(a) A licensed pesticide applicator or a certified private applicator; or

(b) A person applying pesticides under ORS 634.106.

(5) Failure to pay the renewal license fees when due by a pesticide consultant, dealer, operator or applicator, or failure to pay the renewal certificate fees by a trainee, shall forfeit the right to engage in the activities of a pesticide consultant, dealer, operator, applicator or trainee, as the case may be. Any person whose pesticide consultant, dealer, operator or applicator license, or trainee certificate has been forfeited, shall not be issued a license, certificate or renewal license or renewal certificate except upon written application to the department accompanied by a sum of money equal to the license or certificate fee which should have been paid.

(6) If such person is a pesticide consultant or applicator and does not pay the license fee during the first month in which the license fee is delinquent, thereafter such pesticide consultant or applicator shall not only pay the required license fee but shall also obtain a passing grade in a reexamination given by the department for pesticide applicators as prescribed in ORS 634.122, or otherwise demonstrate knowledge of the subject to the satisfaction of the department.

(7) No penalty reexamination shall be required of a person whose application for renewal of a license or certificate is accompanied by a signed statement that prior to the application the person has not operated or worked as a pesticide consultant, applicator or trainee, as the case may be, during the previous six months or since the expiration date of the last license or certificate of the person, whichever time is less. If the department later verifies this signed statement is false, then notwithstanding the provisions of ORS chapter 183, the department may immediately suspend the license or certificate which was issued as a result of such statement. Such suspension shall only be removed after the person has complied with the applicable provisions of subsections (5) and (6) of this section. [1973 c.341 §14; 1975 c.304 §10; 1979 c.232 §1; 2007 c.768 §40]

634.116 Pesticide operator license; authorized activities; fees; pesticide applicator license; liability insurance; limitation on damages; rules; exemptions. (1) A pesticide operator's license, or supplements thereto, shall authorize the licensee to engage in one or more of the classes of pest control or pesticide application business prescribed by the State Department of Agriculture under ORS 634.306 (2). The department may not issue a pesticide operator license to the United States, the State of Oregon or federal, state or local agencies, instrumentalities, political subdivisions, counties, cities, towns, municipal corporations, irrigation, drainage or other districts or other federal, state or local governmental bodies.

(2) During a license period, and after a person has been issued a license to engage in certain classes of pest control or pesticide application business during a license period, the department upon receiving an additional application and applicable fees, may authorize the licensee to engage in additional classes of pest control or pesticide application business for the remainder of the license period as prescribed in ORS 634.306 (2).

(3)(a) The department shall establish a pesticide operator license fee not to exceed \$90 for the first class of pest control or pesticide application business as prescribed in ORS 634.306 (2) and not to exceed \$15 for each additional class.

(b) After a person makes first application for a specific license period, if later during the same license period the person desires to engage in additional classes of pest control or pesticide application businesses, such person shall pay the fee for each additional class established by the department not to exceed \$20.

(4) At least one owner or part owner of the pest control or pesticide application business shall also obtain and maintain a pesticide applicator's license if the pesticide operator is a sole proprietorship or a partnership. At least one officer or employee shall obtain and maintain a pesticide applicator's license if the pesticide operator is a corporation. If a pesticide operator is found to be in violation of this subsection, the pesticide operator's license, notwithstanding ORS chapter 183, is automatically suspended until the pesticide operator is in compliance. If the business is owned by one individual, the department shall make no charge for the pesticide applicator license issued to the individual under ORS 634.122.

(5) The department shall not issue or renew a pesticide operator's license until the applicant or licensee has furnished evidence to the department, in the form of a public liability policy issued by an insurance company qualified to do business in Oregon, protecting the applicant or licensee against liability for injury or death to persons and loss of or damage to property resulting from the application of pesticides, or in lieu of a policy, has furnished a deposit of cash, surety bond or other evidence of financial responsibility acceptable to the department that may be applied by the department to the payment of damages resulting from operator liability. However:

(a) Except as required under paragraph (b) of this subsection, the financial responsibility required by this section shall not apply to damages or injury to crops, real or personal property being worked upon by the applicant.

(b) If the applicant or licensee is to be engaged in the business of controlling or eradicating structural pests, or pests within a public or private place, or pests within private or public places where food is served, prepared or processed or where persons are regularly housed, the financial responsibility required by this section shall apply to damages or injury to real or personal property being worked upon, as well as all the other real and personal property set forth in this section.

(6) The financial responsibility required by subsection (5) of this section must be not less than \$25,000 for bodily injury to one or more persons and not less than \$25,000 for property damage.

(7) Notwithstanding the provisions of ORS chapter 183, if the licensed pesticide operator fails to maintain the financial responsibility required by subsections (5) and (6) of this section, the license is automatically suspended until the department again verifies the pesticide operator is in compliance with subsections (5) and (6) of this



section. The liability insurance company shall notify the department in writing at least 30 days prior to any cancellation of an insurance policy required by this section.

(8) Notwithstanding the provisions of ORS 105.810 and 105.815 or other laws to the contrary, the amount of damages for which a pesticide operator or pesticide applicator is liable as a result of use of pesticides, or financial responsibility for the same is limited to actual damages only.

(9) The department shall return the deposit required by subsection (5) of this section to the pesticide operator if the pesticide operator at any time establishes exemption from the financial responsibility requirements under this chapter. After the expiration of two years from the date of an injury, death, loss or damage, the department shall return any deposit remaining to the pesticide operator or to the personal representative of the pesticide operator except that the department shall not make a return if the department has received notice that an action for damages arising out of the provisions of this section has been filed against the pesticide operator for whom the deposit was made, and the department has determined that the action is pending or that any judgment resulting from the action remains unpaid.

(10) If the pesticide operator is or employs a pesticide applicator to spray or otherwise apply pesticides by aircraft, in addition to other provisions of this section relating to financial responsibility, the department may by rule allow the pesticide operator to reduce, suspend or terminate the liability insurance, applicable to spraying or otherwise applying pesticides by aircraft, and required by subsections (5) and (6) of this section during certain periods of the year.

(11) The department may by rule allow liability insurance policies required by subsections (5) and (6) of this section to include deductible clauses of amounts to be determined by the department.

(12)(a) The United States, the State of Oregon or federal, state or local agencies, instrumentalities, political subdivisions, counties, cities, towns, municipal corporations, irrigation, drainage or other districts or other federal, state or local governmental bodies are not required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department when:

(A) Applying pesticides to property under their ownership, possession, control or jurisdiction;

(B) Applying pesticides pursuant to an order issued by the department for purposes of controlling or eradicating noxious weeds or pests; or

(C) Applying pesticides to property under the ownership, possession, control or jurisdiction of another federal, state or local agency, instrumentality, political subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other federal, state or local governmental body or of a homeowners association as defined under ORS 94.550 if:

(i) The land is in a jurisdiction adjacent to property under their ownership, possession, control or jurisdiction;

(ii) The application is done in conjunction with, or as an extension of, an application of pesticides to property under their ownership, possession, control or jurisdiction; and

(iii) The pesticide application is done on a cost recovery, cooperative trade of services or no cost basis, and not as a source for profit.

(b) A public utility or telecommunications utility is not required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department when applying pesticides to property under the ownership, possession or control of the utility.

(c) In addition to any application allowed under paragraph (a) of this subsection, a vector control district is not required to obtain a license as a pesticide operator or to furnish evidence of financial responsibility to the department when applying pesticides for the prevention, control or eradication of a public health vector as defined in ORS 452.010 to property under the ownership, possession, control or jurisdiction of another federal, state or local agency, instrumentality, political subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other federal, state or local governmental body or of a homeowners association as defined under ORS 94.550 if the pesticide application is done on a cost recovery, cooperative trade of services or no cost basis, and not as a source of profit.

(13) Subject to subsection (15) of this section, the employees of the agencies, instrumentalities, subdivisions, counties, cities, towns, municipal corporations, districts, governmental bodies or utilities described in subsection (12) of this section who perform or carry out the work, duties or responsibilities of a pesticide applicator are subject to the provisions of this chapter, except they shall be issued "public applicator" licenses or, if they carry out the work, duties or responsibilities of a pesticide trainee, shall be issued "public trainee" certificates, if they otherwise comply or qualify with the provisions of this chapter relating thereto.

(14) The public applicator license or public trainee certificate shall be:

(a) Issued by the department upon payment of the fee for the pesticide applicator license or pesticide trainee certificate.

(b) Valid and used by the licensee or certificate holder only when applying pesticides as described in subsection (12) of this section.

(c) Renewed, suspended or revoked each year in the same manner, under the same provisions and at the same time as other pesticide applicator licenses and trainee certificates are renewed, suspended or revoked.

(15) The provisions of subsection (13) of this section apply only to:

(a) The application of restricted-use pesticides;

(b) The application of any pesticide by using a machine-powered device; or

(c) The application of any pesticide at the campus of a school, as defined in ORS 634.700, by an employee of the school.

(16) Prior to applying pesticides to land described in subsection (12)(a)(C) of this section, a public applicator shall inform the person requesting pesticide application of the possible availability of alternative sources of assistance, including sources in the private sector that are registered with the department or with industry trade or professional organizations.

(17) A federal, state or local agency, instrumentality, political subdivision, county, city, town, municipal corporation, irrigation, drainage or other district or other federal, state or local governmental body may not solicit or advertise for pesticide application business in areas outside its jurisdiction. [1973 c.341 §15; 1975 c.304 §11; 1987 c.317 §1; 1987 c.447 §135; 1993 c.599 §1; 2001 c.307 §2; 2005 c.96 §1; 2007 c.258 §9; 2009 c.501 §10; 2015 c.833 §5]

634.122 Applicator license; qualifications; examination; fee. (1) An applicant for a pesticide applicator's license is entitled to be examined for or to be issued a license or supplements thereto by the State Department of Agriculture, if the applicant:

(a) Is at least 18 years of age; and

(b) Proves to the satisfaction of the department that the applicant:

(A) Has had experience as a pesticide trainee for the minimum period and in the manner prescribed by the department;

(B) Has educational qualifications, experience or training which is equal to the minimum standards and requirements established by the department; or

(C) Has been licensed in Oregon as a pesticide applicator and actively engaged in such work during the prior license period, as shall be prescribed by the department.

(2) An applicant for a pesticide applicator's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Integrated pest management techniques, as defined in ORS 634.650, for pest control.

(f) Other requirements or procedures which will be of benefit to and protect the pesticide applicator, the persons who use the services of the pesticide applicator and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine the applicant only in any one or more of the classes of pest control or pesticide application businesses established by the department under ORS 634.306 (2).

(4)(a) A pesticide applicator license fee shall be established by the department not to exceed \$50 for the first class of pest control or pesticide application business as prescribed in ORS 634.306 (2) and not to exceed \$7.50 for each additional class.

(b) After a person makes first application for a license or renewal thereof for a specific license period, if later during the same license period such person desires to engage in additional classes of pest control or pesticide application business as prescribed in ORS 634.306 (2), such person shall pay the fee for each additional class established by the department not to exceed \$12.50.

(5) Examinations or reexaminations for pesticide applicator's licenses shall be given by the department at such time and in any of its branch offices or other locations it deems expedient, and shall be under the supervision of its employees or appointees. The department is authorized to:

(a) Appoint without pay or reimbursement, employees of other state agencies who are authorized to give examinations.

(b) Prepare and maintain various types of examinations and types and schedules of reexaminations and to take all other measures deemed necessary to insure that persons receiving passing grades thereto have been fairly and reasonably tested as to their ability and that there have been no fraudulent or dishonest means used by the applicants in applying for or in the taking of examinations or reexaminations.

(6) If it verifies an applicant has received a passing grade on the examination or reexamination and otherwise has complied with the provisions of this chapter, the department shall issue a pesticide applicator's license. [1973 c.341 §16; 1975 c.304 §12; 1991 c.943 §6; 1993 c.599 §2; 1995 c.79 §326; 2019 c.84 §1]

634.126 Trainee certificate; renewal; fee. (1) In accordance with rules adopted by the State Department of Agriculture, as provided in ORS 634.306 (1), the department shall issue or renew its pesticide trainee's certificate if the applicant or certificate holder:

- (a) Is at least 18 years of age;
- (b) Is employed by a licensed pesticide operator;
- (c) Is working under the direct supervision and control of a licensed applicator or, if spraying or otherwise applying pesticides by aircraft, a certified aerial pesticide applicator; and
- (d) Is in compliance with the applicable provisions of this chapter and rules adopted under this chapter.

(2) The fees for a pesticide trainee's certificate, or renewal thereof, shall be the same as the license fee for a pesticide applicator. [1973 c.341 §17; 1997 c.249 §193; 2015 c.833 §6]

634.128 Aerial pesticide applicator certificate; fee. (1) An individual may not spray or otherwise apply a pesticide by aircraft unless the individual holds a valid aerial pesticide applicator certificate issued by the State Department of Agriculture.

(2) The department may issue an aerial pesticide applicator certificate to an individual who:

- (a) Is a licensed pesticide applicator, licensed public applicator or certified private applicator;
- (b) Passes a national examination, or other examination approved by the department, testing the knowledge of the individual regarding proper spraying and other application of pesticides by aircraft;
- (c) Holds a valid commercial pilot certificate for the type of aircraft to be used by the individual in applying pesticides;
- (d) Has 50 or more hours of experience as a licensed pesticide applicator, licensed public applicator or certified private applicator, or as a pesticide trainee or public trainee under the supervision of a certified aerial pesticide applicator, on flights conducted for the purpose of carrying out, or training to carry out, spraying or otherwise applying pesticides by aircraft; and
- (e) Pays a certificate fee established by the department by rule.

(3) In determining appropriate examinations for approval under subsection (2)(b) of this section, the department shall give consideration to any examination of aerial

pesticide applicator competency developed or approved by a national organization of state agencies that regulate agriculture.

(4)(a) The department shall establish a term for aerial pesticide applicator certificates, not to exceed five years. The department shall suspend or revoke the certificate if the certificate holder fails to maintain a valid pesticide applicator license, public applicator license or private applicator certificate. Except as provided in paragraph (b) of this subsection, an aerial pesticide applicator certificate may be renewed.

(b) The certificate holder may renew an aerial pesticide applicator certificate only if, during the preceding five years, the holder successfully completed at least 10 credit hours in programs of instruction or educational courses satisfactory to the department and related to the spraying or other application of pesticides by aircraft. In determining whether programs of instruction or educational courses are satisfactory for purposes of this subsection, the department shall consult with professional associations or other organizations serving aerial applicators of pesticides or with a national organization of state agencies that regulate agriculture. The department shall count any credit hours in satisfactory programs of instruction or educational courses described in this subsection toward any instruction or education requirements imposed by the department for the renewal of a pesticide applicator license.

(5) If a certificate holder is licensed as a public applicator, the certificate holder may spray or otherwise apply pesticides by aircraft only to properties described in ORS 634.116 (12). [2015 c.833 §3; 2015 c.833 §4]

634.132 Consultant license; fee; qualifications; examination; applicability of law. (1) The annual license fee for a pesticide consultant shall be established by the State Department of Agriculture not to exceed \$40.

(2) An applicant for a pesticide consultant's license shall be required to demonstrate satisfactorily by written examination or any reexamination given by the department, an adequate knowledge of:

(a) The characteristics of pesticides and the effect of their application to particular crops.

(b) The practices of application of pesticides.

(c) The conditions and times of application of pesticides and the precautions to be taken in connection therewith.

(d) The applicable laws and rules relating to pesticides and their application in this state.

(e) Other requirements or procedures which will be of benefit to and protect the pesticide applicators, the persons who use the services of the pesticide applicator and the property of others.

(3) Based upon the license application and the request of the applicant, the department may examine the applicant only in any one or more of the classes of pesticides established by the department under ORS 634.306 (2).

(4) Examinations or reexaminations for pesticide consultant's licenses shall be subject to ORS 634.122 (5) and (6).

(5) This section shall not apply to licensed pesticide applicators or operators. [1973 c.341 §18; 1975 c.304 §13; 1993 c.599 §3; 2019 c.84 §2]

634.136 Dealer license; fee; applicability of law. (1) The annual license fee for a pesticide dealer shall be established by the State Department of Agriculture not to exceed \$75. A separate license shall be required for each sales outlet or location.

(2) This section shall not apply to:

(a) Any licensed pesticide operator who sells restricted-use or highly toxic pesticides as a part of services, or through licensed employees, through the use of the equipment of the licensed pesticide operator.

(b) Any state, federal or governmental agency providing restricted-use or highly toxic pesticides to its own employees for use in its own programs.

(c) Any person who sells, offers for sale, handles or distributes pesticide-fertilizer mixtures only in packages of 25 pounds or less in size. [1973 c.341 §19; 1975 c.304 §14; 1993 c.599 §4]

634.142 Private applicator certificate; standards; fee. (1) The State Department of Agriculture shall issue or renew a private applicator's certificate if the applicant or certificate holder meets the certification standards established by the department pursuant to ORS 634.306 (14).

(2) A fee, established by the department, shall be assessed for a private applicator's certificate or renewal thereof. The fee may not exceed \$25. The time for which a certificate is valid shall be five years. [1973 c.341 §20; 1979 c.232 §2; 2003 c.14 §390]

634.146 Records required of operators; retention period; report to owner of treated field crops. (1) Pesticide operators shall prepare and maintain records on forms approved by the State Department of Agriculture. Such records shall include:

(a) The name of the person for whom the pesticide was applied.

(b) The approximate location of the land or property on which the pesticide was applied.

(c) The date and approximate time of application.

(d) The person who supplied the pesticides.

(e) The trade name and the strength of such pesticides.

(f) The amount or concentration (pounds or gallons per acre of active ingredient or concentration per approximately 100 gallons).

(g) The specific property, crop or crops to which the pesticide was applied.

(h) The summary information of equipment, device or apparatus used and, if applied by aircraft, the Federal Aviation Administration number.

(i) The names of the pesticide applicator or pesticide trainees who did the actual application or spraying.

(2) The records, which shall be kept for a period of at least three years from the date of application of pesticides, shall be available during business hours for review and inspection by the department.

(3) Upon receiving a request from any owner of field crops on which pesticides were applied, the pesticide operator within 40 days after making such application shall give or forward to the owner a written statement setting forth the information described in subsection (1)(a), (b), (c), (e), (f) and (g) of this section. [1973 c.341 §21; 2001 c.104 §248]

634.148 Retesting following violation. If an individual holding a license, certificate or other authorization issued under this chapter commits or has responsibility for a violation of this chapter related to the spraying or other application of a pesticide, or for a violation of a State Department of Agriculture rule related to those applications, and the department in its discretion deems that the violation indicates an inadequate knowledge of the laws and rules applicable to pesticides, in addition to any other available penalty or sanction:

(1) The department may require that the individual retake any examination required for issuance of a license, certificate or other authorization that the individual holds or is required to hold for activities related to pesticides; and

(2) If the individual fails an examination required by the department under subsection (1) of this section, the department may suspend, revoke or refuse to renew the license, certificate or other authorization of the individual. A suspension, revocation or refusal to renew under this subsection is subject to ORS chapter 183. [2015 c.833 §19]

634.172 Procedure for making liability claim against landowner or pesticide operator; investigation of report of loss; claim procedure not waiver of governmental immunity. (1) No action against a landowner, person for whom the pesticide was applied or pesticide operator arising out of the use or application of any pesticide shall be commenced unless, within 60 days from the occurrence of the loss, within 60 days from the date the loss is discovered, or, if the loss is alleged to have occurred out of damage to growing crops, before the time when 50 percent of the crop is harvested, the person commencing the action:

(a) Files a report of the alleged loss with the State Department of Agriculture;

(b) Mails or personally delivers to the landowner or pesticide operator who is allegedly responsible for the loss a true copy of the report provided for under paragraph (a) of this subsection; and

(c) Mails or personally delivers to the person for whom the pesticide was applied a true copy of the report required under paragraph (a) of this subsection if that person is not the person commencing the action.

(2) Any person who claims to have sustained any loss arising out of the use or application of any pesticide by any state agency, county or municipality may file a report of loss with the department, and mail or personally deliver a true copy of such report of loss to the state agency, county or municipality allegedly responsible, within the time provided in subsection (1) of this section.

(3) Upon receiving a report of loss as provided by this section:

(a) The department may investigate, examine and determine the extent and nature of the damage alleged to have been caused to property or crops. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(b) The department at the request of, and without cost to, any persons financially interested in the matter may undertake to mediate an equitable settlement of the controversy.

(4) Upon receiving a request from any person, other than a person who may file a report of loss as provided by subsection (1) or (2) of this section, the department may investigate, examine and determine the extent and nature of damage alleged to have been caused to property or crops arising out of the use or application of any pesticide by any other person, provided that the person making such request reimburses the department for its work. The department shall not determine the source of the damage, the person who may have caused the damage or the financial extent of the loss or damage. The department shall prepare and file in its office a report of the investigation, examination and determination. Copies of the report made by the department may be given upon request to persons who are financially interested in the matter.

(5) Nothing in this section shall be construed as a waiver by the State of Oregon or any state agency, county or municipality of any immunity against suit that otherwise may exist.

(6) Notwithstanding ORS 634.006, as used in this section, "landowner" includes any person shown by records of the county to be the owner of land or having such land under contract for purchase. [1973 c.341 §23; 1991 c.351 §1; 1995 c.96 §2; 2015 c.833 §13]

634.206 Continuation of protected and restricted areas created by former law. There hereby is created a protected area or restricted area territorially identical respectively with each protected area or restricted area existing as of October 5, 1973, or a restricted area established pursuant to ORS 573.537 and in effect June 1, 1973, if such existing protected area or restricted area was established or succeeded pursuant to the provisions of ORS chapter 573. Each protected area or restricted area hereby created shall bear the name of the formerly designated protected area or restricted area with which it is territorially identical. It shall succeed to the duties, obligations, property, rights and privileges of such formerly designated protected area or restricted area and shall function as authorized by the provisions of this chapter. [1973 c.341 §24]

634.212 Formation of protected areas; petition; filing fee; guidelines for determinations by director. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within the territory proposed to be a protected area, the State Department of Agriculture may establish a



protected area, in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines.

(2) The petition, referred to in subsection (1) of this section, shall include the following:

(a) The proposed name of the protected area.

(b) The description, including proposed boundaries, of the territory proposed to be a protected area.

(c) A concise statement of the need for the establishment of the protected area proposed.

(d) A concise statement of the pesticides and the times, methods or rates of pesticide applications to be restricted or prohibited and the extent such are to be restricted or prohibited.

(e) A request that a public hearing be held by the department.

(f) The name of the person authorized to act as attorney in fact for the petitioners in all matters relating to the establishment of a proposed protected area.

(g) A concise statement of any desired limitations of the powers and duties of the governing body of the proposed protected area.

(3) If more than one petition, referred to in subsection (1) of this section, is received by the department describing parts of the same territory, the department may consolidate all or any of such petitions.

(4) Each petition, described in subsection (1) of this section, shall be accompanied by a filing fee of \$125. Upon receipt of such petition and payment of such fee, the department shall prepare and submit to the petitioners an estimated budget of the costs of establishing such proposed protected area, including cost of preparation of the estimated budget, of the hearing and of the preparation of required documents. Within 15 days of the receipt of the estimated budget, the petitioners shall remit to the department the difference between the filing fee and total estimated budget. If the petitioners fail to remit such difference, the department shall retain the filing fee and terminate the procedure for establishment of a proposed protected area. If, upon completion of the procedure for establishment of a proposed protected area, there remains an unexpended and unencumbered balance of funds received by the department under this section, such balance shall be refunded to the petitioners through their designated attorney in fact.

(5) When determining whether to amend or revoke a rule or order declaring a protected area, the Director of Agriculture shall consider, among other factors, the following:

(a) The agricultural and horticultural crops, wildlife or forest industries to be affected and their locations.

(b) The topography and climate, including temperature, humidity and prevailing winds, of the territory in which the proposed protected area is situated.

(c) The characteristics and properties of pesticides used or applied and proposed to be restricted or prohibited. [1973 c.341 §25; 1999 c.59 §185; 2005 c.22 §446; 2007 c.71 §197; 2009 c.98 §27]

634.216 Protected area as governmental subdivision upon completion of required filings. If the Director of Agriculture declares a protected area under ORS 634.212, the copy of the rule or order that the director files with the Secretary of State must be accompanied by a map of a scale of at least one inch per mile. The Secretary of State shall maintain a copy of the rule or order, and of the map, as a public record in the office of the Secretary of State. Upon such required filings, the protected area shall be deemed to be a governmental subdivision of the state and a public body corporate. [1973 c.341 §26; 2009 c.98 §28]

634.222 Determination of lawful establishment of protected area in actions or proceedings; certified copy of filed order as evidence. In any suit, action or proceeding involving the validity or enforcement of any proceeding or action of a protected area, the protected area shall be deemed to have been established in accordance with the provisions of this chapter upon proof of the filing of an order as required by ORS 634.216. A copy of such order, certified as filed by the Secretary of State, shall be admissible evidence in any such suit, action or proceeding and shall be proof of the filing and contents thereof. [1973 c.341 §31]

634.226 Protected area governing committee; member election and terms; committee officers; duties and powers; rulemaking authority. (1) A protected area, established pursuant to the provisions of this chapter, shall be governed and administered by an area committee consisting of five members. The term of office of each member, except as provided in paragraphs (b) and (c) of this subsection, shall be three years. Such area committee shall be established in accordance with the following:

(a) Within 30 days after the establishment of a protected area, as provided in ORS 634.216, the State Department of Agriculture shall give notice that petitions to nominate candidates for three positions on such committee shall be accepted by the department. Such notice shall be given by publication at least once in a newspaper of general circulation in the protected area and by delivery of a copy of the notice to the county clerk of the county in which the protected area is situated, who thereafter shall post the same in a conspicuous public place. Such notice shall contain:

- (A) The address of the department;
- (B) The time within which the petition to nominate is to be filed;
- (C) The fact that 25 or more electors, or two-thirds of the electors then registered, if there are less than 25, residing within the protected area must subscribe such petition;
- (D) The fact that such electors may subscribe the nominating petition of more than one candidate for a position on said committee; and
- (E) The fact that a candidate must reside within the protected area.

(b) Upon receipt of any nominating petitions described in subsection (1)(a) of this section, the department shall prepare ballots containing the names of the candidates, in alphabetical order of surnames, and a space for at least one write-in candidate. If no nominating petitions are received by the department, this fact shall be stated upon the ballot and at least three spaces provided thereon for write-in candidates. Such ballots shall also state the time within which the ballots are to be returned to the department

and the address of the department. All electors within the boundaries of the territory as determined by the department are eligible to vote in the referendum. The department shall determine the results of such election and shall file with the Secretary of State a declaration of the results of such election, which declaration shall be maintained as a public record in the office of the Secretary of State. The three candidates receiving the largest number of the votes cast in such election shall be the three elected members of the area commission, whose terms of office, to be determined by lot, shall be one, two and three years respectively.

(c) Upon determining the results of the election provided in paragraph (b) of this subsection, the department shall appoint two members to the area committee, which appointments shall be subject to the approval of the majority of the three elected members of said committee. Such appointed members shall be residents of the protected area and have knowledge of pesticides, pesticide application and existing conditions, affecting pesticide application. The terms of office, to be determined by lot, shall be one and two years respectively, and the department shall thereafter appoint the successors in office of such members, as well as those of elected members whose office is vacated prior to the expiration of a term.

(2)(a) Upon the establishment of the area committee, the members thereof shall designate a chairperson, secretary and treasurer, which designations may, from time to time, be changed. A majority of the area committee shall constitute a quorum and an act by a majority of such quorum shall constitute an official act of the area committee.

(b) The area committee shall:

(A) Provide for surety bonds for all persons entrusted with funds or property of the protected area;

(B) Prepare and maintain accurate and complete records of all activities, meetings, orders and regulations of the protected area;

(C) Employ, as deemed necessary, persons to assist the area committee in its administration and enforcement activities, including issuance of permits to applicators;

(D) Not engage in the business of buying or selling pesticides;

(E) Promulgate, in consultation with the department, regulations as provided in subsection (4) of this section;

(F) Carry out the procedures for the establishment of a restricted area as provided in ORS 634.232;

(G) Prepare and make public at annual meetings to be called by the area committee chairperson, annual reports and audits; and

(H) Be authorized to receive funds from any source and use the same to carry out and enforce ORS 634.212 to 634.242.

(3) Each year after the establishment of a protected area and at least 15 days prior to the annual meeting called pursuant to subsection (2)(b)(G) of this section, the area committee shall notify the department of the annual meeting time. Upon receipt of such notice, the department shall initiate and carry out the procedures for election of members to vacancies on the area committee and shall follow the procedures for elections provided in subsection (1) of this section. The candidates shall be elected and take office as provided in subsection (1) of this section.

(4)(a) In accordance with the provisions of ORS chapter 183, the area committee shall promulgate regulations governing or prohibiting the application of pesticides within

the protected area, by aircraft or otherwise, which relate to the time, place, method of pesticide application and other matters necessary to prevent damage or injury to susceptible crops, insects, wildlife or forests.

(b) In promulgating such regulation, the area committee shall consider, among other things, the:

- (A) Topography and climate, including temperature, humidity and prevailing winds;
- (B) Characteristics and properties of pesticides used or applied; and
- (C) Location of susceptible crops, insects, wildlife or forests.

(c) Any interested person may petition to enlarge or restrict the regulation of pesticide application by filing a petition to amend the regulations of the protected area with the area committee which, in consultation with the department and in accordance with the provisions of ORS chapter 183, shall allow or deny such petition and amend the regulations of the protected area accordingly. [1973 c.341 §27; 1997 c.249 §194]

634.232 Restricted area formation; matters to be considered; additional area committee member. (1) At any time after the establishment of a protected area, the State Department of Agriculture at the request of the area committee of such protected area, may establish a restricted area in accordance with the provisions of ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines.

(2) The request, referred to in subsection (1) of this section, shall include the following:

(a) The description, including proposed boundaries, of the territory proposed to be a restricted area.

(b) A concise statement of the need for the establishment of the restricted area proposed.

(c) A concise statement of the pesticides and the times, methods or rates of pesticide application to be restricted.

(3)(a) In considering the establishment of a restricted area wherein herbicides are to be restricted, the outer boundaries of such proposed restricted area shall not be in excess of 10 airline miles beyond the outer boundary of the protected area, and if a restricted area wherein all other pesticides are to be restricted shall not be in excess of one airline mile beyond the outer boundary of the protected area.

(b) In considering the establishment of a restricted area, the factors set forth in ORS 634.212 (5) shall be considered.

(c) ORS 634.216 shall apply to the establishment of a restricted area, except that such restricted area shall be governed and administered by the area committee of the protected area, which committee shall have the same powers and duties set forth in ORS 634.226 (2)(b), and except such restricted area shall not be deemed to be a governmental subdivision of this state as a public body corporate.

(d) In the event that a restricted area is established pursuant to subsection (1) of this section, the area committee shall be expanded to include one additional member who resides in the restricted area, but outside of the protected area. The additional member shall be elected in accordance with ORS 634.226. [1973 c.341 §28; 2009 c.98 §29]

634.236 Increasing or decreasing size of protected area; consolidation of areas. (1) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within a protected area, the State Department of Agriculture may include additional adjacent territory in a protected area or withdraw territory from a protected area. The procedures to be followed by the department in considering such petition shall be those set forth in ORS 561.510 to 561.590 governing the procedures for the declaration of quarantines.

(2)(a) Upon receiving a petition of any 25 or more landowners, representing at least 70 percent of the acres of land, situated within two or more adjacent protected areas, the department may consolidate such adjacent protected areas. The procedures shall be the same as described in subsection (1) of this section.

(b) In the event of consolidation of protected areas, the corporate existence and terms of office of the area committee members of the preexisting protected areas shall terminate upon the filing of the order described in ORS 634.216. ORS 634.216 applies to the newly consolidated protected area, and all rights, powers, assets and duties of the several preexisting protected areas shall be vested in, and assumed by the newly consolidated protected area.

(c) The establishment, organization, duties and authority of the area committee of the consolidated protected area shall be in accordance with ORS 634.226. [1973 c.341 §29; 2009 c.98 §30]

634.242 Taxing power of area committee; limitation on amount of levy. (1) The area committee of a protected area may levy and cause to be collected an ad valorem tax for the purpose of paying the obligations of the protected area incurred in the administration of its responsibilities under this chapter.

(2) The levy in any one year shall not exceed one-fortieth of one percent (0.00025) of the real market value of all taxable property within the protected area, computed in accordance with ORS 308.207. The taxes shall be levied and collected at the time and in the manner provided for the levy and collection of state and county taxes, and shall be paid by the county officers collecting the same to the treasurer of the protected area. [1973 c.341 §30; 1991 c.459 §438]

634.306 General duties and powers of department; rules. In accordance with the provisions of ORS chapter 183, the State Department of Agriculture may adopt rules to carry out the purposes and intent of this chapter, including but not limited to rules that:

(1) Establish and maintain a program required for an individual to work or engage in the application or ~~spraying~~**other use** of pesticides as a pesticide trainee. In this regard, the department may take into consideration:

(a) Requirements for submission of applications by pesticide trainees.

(b) Minimum and maximum periods of work or experience required for pesticide trainees.

(c) Work performance records or reports to be maintained by pesticide trainees or their employers.

(d) Acceptance of educational qualifications, applicable work or experience in similar or other fields in lieu of, or as a part of, periods of employment or work by pesticide trainees.

(e) Forms and types of pesticide trainee certificates to be issued by the department, authorizing trainees to apply pesticides in all or part of the classes of operations or businesses set forth in subsection (2) of this section.

(f) Laws and requirements relating to other professional, trade or industry trainee or apprenticeship programs in this or other states.

(g) Special requirements if the pesticide trainee is to assist a pesticide applicator in the spraying or other application of pesticides by aircraft, and the advisability of allowing participation in federal flight training programs to be substituted, all or in part, for training requirements under this chapter.

(2) Establish and maintain classifications of the various pesticides and of the various pest control or pesticide application businesses in order to facilitate the licensing or certification and regulation of pesticide consultants, operators, applicators, private applicators and trainees. In this regard the department may take into consideration:

(a) Various types, formulations and characteristics of pesticides used and their purposes.

(b) Various methods of application of the pesticides.

(c) Precautions required for safe and effective application of the pesticides.

(3) Designate pesticides authorized to be used or applied, or prohibited from use or application, by persons in order to qualify for an exemption under ORS 634.106.

(4) Establish and maintain classifications of pesticides and devices that are deemed to be highly toxic or restricted-use pesticides or devices. In this regard, the department shall take into consideration:

(a) Laws and regulations of the federal government, including the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq., as amended, and the Federal Environmental Pesticide Control Act of 1972, 86 Stat. 973.

(b) Laws and regulations of other states.

(c) Advice and counsel of experts in pesticides from industry, universities and colleges and other governmental agencies or bodies.

(5) Establish and maintain types of pesticide consultant or applicator examinations and reexaminations, schedules for required reexaminations and other measures deemed necessary for fair and reasonable testing of applicants as provided in ORS 634.122 (5).

(6) Designate the conditions under which pesticide operators that are or that employ pesticide applicators to spray or otherwise apply pesticides by aircraft may reduce, suspend or terminate the liability insurance required by ORS 634.116, and the periods of time for a reduction, suspension or termination. In this regard, the department may take into consideration:

(a) Changes in climate or seasons.

(b) Periods when certain crops are or have been harvested.

(c) Restricted or limited use of various types or classes of pesticides.

(d) Possibilities of injury or death to humans and loss or damage to real or personal property.

(7) Establish the conditions and amounts allowed for deductible classes in the liability insurance required by ORS 634.116.

(8) Establish and maintain programs of instruction or educational courses for pesticide consultants, operators, applicators and private applicators in cooperation with Oregon State University or others, wherein, as far as is practicable, provisions are made so as to allow the pesticide operators and applicators to participate only in the instruction or courses directly or indirectly related to their particular activities. Attendance of licensees may be required.

(9) Prepare and distribute a manual, or other form of publication, containing information helpful and beneficial to individuals engaged in pesticide application or use or to persons preparing to qualify for licensing as a pesticide operator, consultant or applicator and establish charges therefor.

(10) Establish, from time to time, advisory groups or committees to assist the department in formulation of policies, plans or regulations under this chapter. Each member of any such group or committee so established shall be entitled to compensation and expenses as provided in ORS 292.495, to be charged to the department.

(11) Establish registration fees for pesticide brands and formulae or formulations under those pesticide brands.

(12) Establish restrictions or prohibitions as to the form of pesticides allowed to be mixed, applied or added to fertilizers, seed or grains.

(13) Establish restrictions, methods and procedures in the storage, transportation, use or application of restricted-use pesticides or highly toxic pesticides in order to protect humans, pollinating insects, bees, animals, crops, wildlife, land or environment.

(14) Establish and maintain a system for certification of private applicators. In this regard, the department shall take into consideration:

(a) Laws and regulations of the federal government, including the provisions of the Federal Environmental Pesticide Control Act of 1972, 86 Stat. 973, and the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq., as amended thereby, and regulations thereunder.

(b) Minimum periods of experience required and types of experience, education or work acceptable.

(c) Forms and types of private applicator certificates to be issued by the department, authorizing private applicators to apply pesticides in all or part of the classifications of pesticides set forth in subsection (4) of this section. [1973 c.341 §32; 1999 c.1059 §§13,17; 2015 c.833 §§7,8; 2017 c.17 §§46,47; 2019 c.13 §§56,57]

634.312 Department to develop programs for solution of pesticide and synthetic chemical problems. The increasing formulation, distribution, application and use of pesticides and other synthetic chemicals have created serious problems with storage, disposition and transportation of pesticides and other synthetic chemicals which cannot or should not be distributed, applied or used. Such problems include but are not limited

to the recall and storage of pesticides and other synthetic chemicals prohibited from distribution, application or use because of a violation of or noncompliance with a law or regulation. The State Department of Agriculture shall review scientific information relating to such problems and develop immediate and long-range programs or plans for solutions to such problems, and for these purposes seek the advice of governmental agencies or bodies. [1973 c.341 §4; 1993 c.742 §112]

634.316 List of highly toxic and restricted-use pesticides. The State Department of Agriculture may establish, maintain and amend lists of pesticides and devices which are highly toxic or restricted-use pesticides or devices. [1973 c.341 §8]

634.322 Enforcement powers of department. In carrying out and enforcing the provisions of this chapter, the State Department of Agriculture is authorized:

(1) To collect samples of pesticides from any source, for analysis to determine compliance with this chapter.

(2) In accordance with the provisions of ORS 561.605 to 561.630, to seize or embargo any pesticide or device which is misbranded, adulterated or otherwise in violation of this chapter.

(3) Notwithstanding the provisions of ORS 561.605 to 561.630, whenever the department has reasonable cause to believe a pesticide or device is being formulated, distributed, stored or transported in violation of any of the provisions of this chapter, to issue and serve a written "stop sale, use or removal" order to and upon the owner or person in custody of any such pesticide or device. In the event the owner or person in custody is not available for service of the order, the department may attach a copy of the order to the pesticide or device. Upon issuance of the order, the pesticide or device shall not be sold, used or removed until the provisions of this chapter have been complied with and the pesticide or device has been released, by written notice of the department, under conditions specified by the department.

(4) In accordance with the provisions of ORS chapter 183, to revoke, suspend or refuse to issue or renew any license or certificate if it determines that an applicant, licensee or certificate holder has violated: ~~any of the provisions of this chapter~~

**(a) A provision of this chapter;**

**(b) A rule adopted by the department for the administration or enforcement of this chapter;**

**(c) A provision of federal law set forth in 7 U.S.C. 136 to 136y, as amended and in effect on July 1, 2019;**

**(d) A federal regulation set forth in 40 C.F.R. 152.1 to 180.2020, as amended and in effect on July 1, 2019.**

(5) In accordance with the provisions of ORS chapter 183, to amend, suspend or revoke the registration of a pesticide for violation of any of the provisions of this chapter.

(6) To establish limitations and procedures deemed necessary and proper for the protection of persons, pollinating insects, bees, animals, crops, wildlife, land or environment, on the following:

(a) Quantities of packages;

(b) Quantities of sales;



- (c) Uses or applications;
- (d) Methods of sale, including prescription or permit requirements; or
- (e) Persons to whom sold.

(7) To inspect any records required to be maintained by persons formulating, distributing, using or selling the pesticides described in ORS 634.306 (4), and to cause monitoring of the effects of such pesticides on human or animal life in any area where it is used or applied by a recognized and qualified person or agency.

(8) To enter into cooperative and reciprocal agreements with the federal government, or any of its agencies, for the purpose of enforcement of the provisions of this chapter or federal laws and regulations on the same subject matters, and to receive and expend funds pursuant to such agreements in furtherance of such purpose.

(9) To cooperate with, and request the assistance of, Oregon State University, governmental agencies or other persons for the purpose of enforcement of the provisions of this chapter.

(10)(a) To act jointly in, and with the concurrence of the State Forester and a research specialist designated by Oregon State University, the issuance of permits for the use of isopropyl ester of 2,4-D or any other ester of equal or higher volatility with regard to plant damage. Each such permit shall specify:

- (A) The particular ester allowed;
- (B) The boundaries of the area in which it may be used; and
- (C) The prescribed time limit and condition under which it may be applied.

(b) Such permits shall only be issued when the issuing authority determines that the use of the ester will not damage agricultural and forest products and susceptible crops. In making such determination, the issuing authority shall consider research data, topography, climate, temperature, humidity, prevailing winds, characteristics of the ester and location of agricultural and forest products and susceptible crops. Such permits may be issued subject to conditions prescribed by the issuing authority. Issuance of such permit shall not be construed as a waiver of any of the provisions of this chapter.

[1973 c.341 §33; 1979 c.232 §3]

634.326 Use of moneys received by department. (1) The State Department of Agriculture shall deposit all fees paid to it under the provisions of this chapter in the Department of Agriculture Service Fund. Such moneys are continuously appropriated to the department for the purpose of administering and enforcing the provisions of this chapter.

(2) An amount of the fees and moneys referred to in subsection (1) of this section not to exceed 10 percent of registration fees received under ORS 634.016 may be used by the department pursuant to agreements entered into between the department and the Dean of the College of Agricultural Sciences of Oregon State University, with the advice of the Minor Crops Advisory Committee for the purposes set forth in subsection (3) of this section.

(3) The amounts provided for in subsection (2) of this section shall be used by the Dean of the College of Agricultural Sciences of Oregon State University for research projects and investigations agreed upon by the dean and the department directed

toward obtaining pesticide use registrations needed by growers to produce crops economically in Oregon.

(4) The department shall apply \$10 of each registration fee collected pursuant to ORS 634.016 to fulfill the provisions of ORS 634.045 (4). [1973 c.341 §35; 1979 c.499 §33; 1989 c.709 §4; 2015 c.744 §§5,6]

634.372 Prohibited acts. A person may not:

(1) Make false or misleading claims through any media, relating to the effect of pesticides or application methods to be utilized.

(2) As a pesticide applicator or operator, intentionally or willfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling, or as a pesticide consultant or dealer, recommend or distribute such pesticides.

(3) Operate a faulty or unsafe pesticide spray apparatus, aircraft or other application device or equipment.

(4) Perform pesticide application activities in a faulty, careless or negligent manner.

(5) Refuse or neglect to prepare and maintain records required to be kept by the provisions of this chapter.

(6) Make false, misleading or fraudulent records, reports or application forms required by the provisions of this chapter.

(7) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesticide applicator or certified private applicator performing the actual application, or supervising such application if such is performed by a pesticide trainee. This prohibition does not apply to the operation of tractors, trucks or other vehicular equipment used only under the supervision of a certified private applicator.

(8) As a pesticide applicator, work or engage in the application of any classes of pesticides without first obtaining and maintaining a pesticide applicator's license, or apply pesticides that are not specifically authorized by such license.

(9) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides upon the land or property of another, without first obtaining and maintaining a pesticide operator's license. The operator also may not engage in a class of pesticide application business that is not specifically authorized by license issued by the State Department of Agriculture. The operator also may not employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee.

(10) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's certificate and is otherwise in compliance with the provisions of this chapter.

(11) Act as, or purport to be, a pesticide dealer or advertise as such without first obtaining and maintaining a pesticide dealer's license.

(12) Act as, or purport to be, a pesticide consultant without first obtaining and maintaining a pesticide consultant's license.

(13) Apply any pesticide classified as a restricted-use or highly toxic pesticide to agricultural, horticultural or forest crops on land owned or leased by the person without first obtaining and maintaining a private applicator certificate.

(14) As a person described in ORS 634.106 (5), use power-driven pesticide application equipment or devices (use hand or backpack types only), or use or apply any pesticide other than those prescribed by the department.

(15) Deliver, distribute, sell or offer for sale any pesticide that is misbranded.

(16) Formulate, deliver, distribute, sell or offer for sale any pesticide that is adulterated.

(17) Formulate, deliver, distribute, sell or offer for sale any pesticide that has not been registered as required by ORS 634.016.

(18) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride that is not distinctly colored.

(19) Distribute, sell or offer for sale any pesticide except in the manufacturer's original unbroken package.

(20) Make application of pesticides, by aircraft or otherwise, within a protected or restricted area without first obtaining a permit for such application from the committee of the protected or restricted area in which the application is to be made. The person also may not make such application contrary to the conditions or terms of the permit so issued.

(21) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to plant damage as determined by the department, without first obtaining a permit for such use as provided in ORS 634.322 (10).

(22) Sell, use or remove any pesticide or device subjected to a "stop sale, use or removal" order until the pesticide or device has been released therefrom as provided in ORS 634.322 (3). [1973 c.341 §34; 1987 c.158 §121; 1995 c.360 §2; 1999 c.1059 §§14,18; 2001 c.307 §§3,4]

634.375 Sanctions for failure to pay civil penalty. The State Department of Agriculture may suspend, revoke or refuse to renew a license, certificate or other authorization issued to a person under this chapter if the person fails to pay a civil penalty under ORS 634.900 on or before 90 days after the date that the order imposing the civil penalty becomes final by operation of law or on appeal. [2015 c.833 §10]

634.410 Study of effects of thiram on health and safety; evaluation; report. The Workers' Compensation Board shall cause the Occupational Health Section to conduct a study or insure that a study is conducted, of the effects on occupational health and safety of the use in reforestation activities of tree seedlings treated with the pesticide thiram or any formulation containing the chemical tetramethylthiuram disulfide. The study shall include evaluation of alternative precautionary measures that may be taken to protect the health and safety of individuals involved in reforestation activities who handle tree seedlings treated with thiram. The board shall report its findings and recommendations to the State Department of Agriculture not later than December 1, 1976. [1975 c.777 §2]

634.415 Rules to insure adequate precautionary measures in use of thiram in reforestation. The Workers' Compensation Board shall as a result of the study direct the

Occupational Health Section to promulgate rules and regulations to insure that adequate precautionary measures and procedures are followed during the use of thiram in reforestation operations. [1975 c.777 §3]

634.420 Limit on use of thiram; effect of study. Notwithstanding any other provision of this chapter, the State Department of Agriculture shall not register or otherwise authorize the use of the pesticide thiram as a repellent on forest tree seedlings after June 1, 1977, unless a report to the department made pursuant to ORS 634.410 to 634.425 states that thiram may be used for such purpose without creating a serious health or safety hazard to individuals involved in reforestation activities who handle tree seedlings treated with thiram and that adequate precautionary measures may be reasonably undertaken to offset any substantial hazards involved in the use of thiram. [1975 c.777 §4]

634.425 Construction of ORS 634.410 to 634.425. Nothing in ORS 634.410 to 634.425 shall be construed so as to limit the authority of the State Department of Agriculture to refuse registration of the chemical thiram prior to June 1, 1977. [1975 c.777 §5]

634.500 Definitions for ORS 634.500 to 634.520. As used in ORS 634.500 to 634.520:

(1) "Low-leaching tributyltin antifouling paint or coating" means a tributyltin-based marine antifouling paint or coating that has a steady state release rate of not more than 5.0 micrograms per square centimeter per day as determined in accordance with a United States Environmental Protection Agency (EPA) testing procedure as outlined in the EPA data call-in notice of July 29, 1986, on tributyltin in antifoulant paints under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136. If a lower release rate is determined by the Environmental Quality Commission to be necessary to protect health or the environment, such rate, if adopted by rule by the commission, shall be the acceptable release rate.

(2) "Tributyltin-based marine antifouling paint or coating" means a paint, coating or treatment that contains tributyltin or a triorganotin compound used as a substitute for tributyltin and that is intended to control fouling organisms in a freshwater or marine environment.

(3) "Waters of the state" has the meaning given that term in ORS 468B.005. [1987 c.207 §2]

634.505 Prohibition against sale of compound that releases certain substances in water; exception. Except as provided in ORS 634.510 to 634.520, a person may not sell, offer to sell or use in this state tributyltin-based marine antifouling paint or coating unless a method of using such paint or coating exists that does not result in the release of tributyltin or derivative or organotin into the waters of the state. [1987 c.207 §3]

634.510 Conditions for sale. A tributyltin-based marine antifouling paint or coating may be sold or used in this state if the paint or coating is:

(1) Sold and used in accordance with ORS 634.515 and 634.520; and

- (2)(a) A low-leaching tributyltin antifouling paint or coating used on aluminum hulls;
- (b) A low-leaching tributyltin antifouling paint or coating used on a ship that is more than 25 meters in length; or
- (c)(A) In a spray can containing 16 ounces or less of paint or coating; and
- (B) Commonly referred to as an outboard or lower drive unit paint. [1987 c.207 §4]

634.515 Sale by pesticide dealer; duties of customer. (1) Except as provided in subsection (2) of this section, in addition to any other limitation on a restricted use pesticide under this chapter, on and after September 27, 1987:

(a) A low-leaching tributyltin antifouling paint or coating may be sold in Oregon only by a pesticide dealer licensed under ORS 634.112.

(b) A pesticide dealer licensed under ORS 634.112 may sell low-leaching tributyltin antifouling paint or coating only to a person who certifies in writing that the paint or coating is to be used for one of the uses allowed under ORS 634.510.

(2) Notwithstanding any provision of this chapter or any rule adopted thereunder, a pesticide dealer may sell low-leaching tributyltin antifouling paint or coating to any person, whether or not the person is a licensed applicator. [1987 c.207 §5]

634.520 Report of sales to department. (1) Any pesticide dealer licensed under ORS 634.112 who sells low-leaching tributyltin antifouling paint or coating shall submit a periodic report to the State Department of Agriculture.

(2) The report required under subsection (1) of this section shall be submitted to the department on a periodic basis as established by the department. The report shall include the following information about sales of low-leaching tributyltin antifouling paint or coating:

- (a) The name of any person purchasing the paint or coating;
  - (b) The amount sold to each purchaser; and
  - (c) The use for which the purchaser certified the paint or coating was to be used.
- [1987 c.207 §6]

634.550 Center governing board; duties and powers. (1) There is created a Pesticide Analytical and Response Center with a governing board consisting of the following members:

- (a) The Director of Agriculture or designee.
- (b) The State Forester or designee.
- (c) The State Fish and Wildlife Director or designee.
- (d) The Director of the Department of Environmental Quality or designee.
- (e) The Director of the Oregon Health Authority or designee.
- (f) The Administrator of the Occupational Safety and Health Division or designee.
- (g) The State Fire Marshal or designee.
- (h) The Director of the Poison Control and Drug Information Program of the Oregon Health and Science University or designee.
- (i) One citizen from the state at large appointed jointly by the Director of Agriculture and the Director of the Oregon Health Authority.

(2) The Director of Agriculture shall appoint an administrator for the Pesticide Analytical and Response Center, who shall be responsible to the board for performance of the duties of the center and the board.

(3) The Director of Agriculture or designee and the Director of the Oregon Health Authority or designee shall alternate as chairperson of the board for terms of one year each. When one is serving as chairperson, the other shall serve as vice chairperson.

(4) The board shall seek expert consultation from the extension service toxicology program, the Oregon Institute of Occupational Health Sciences and such other sources as may be needed.

(5) The functions of the board are to:

(a) Direct the activities and priorities of the administrator of the center.

(b) Centralize receiving of information relating to actual or alleged health and environmental incidents involving pesticides.

(c) Mobilize expertise necessary for timely and accurate investigation of pesticide incidents and analyses of associated samples.

(d) Identify trends and patterns of problems related to pesticide use.

(e) Make recommendations for action to a state agency when a majority of the board considers that such action may be warranted on the basis of the findings of an incident investigation or on the basis of identification of a trend or pattern of problems. Recommended actions may include, but not be limited to, regulatory action, modification of administrative rules, proposal of new legislation, public education and consultation to industry.

(f) Develop standard operating procedures for implementation by the public entities represented on the board to coordinate the receipt of, and response to, pesticide-related complaints indicating possible health or environmental effects.

(g) Report biennially to the Legislative Assembly, or to an interim committee dealing with natural resource issues, regarding activities during the reporting period by the board and by public entities represented on the board regarding the development, implementation, amendment or operation of standard operating procedures described in paragraph (f) of this subsection.

(h) Report in a standardized format the results of the investigations of pesticide incidents.

(i) Establish by consensus, procedures for carrying out its responsibilities within the limits of available resources.

(j) Prepare and submit to each odd-numbered year regular session of the Legislative Assembly a report of the activities of the center that includes a record of recommendations made by the board and the actions resulting from the board's work.

(6) Upon receipt of a recommendation from the board, a state agency shall respond in a timely manner to inform the board of actions taken or the reasons for taking no action on the recommendation.

(7) Any medical information received by a member of the board or by a staff member of the center in the course of carrying out the duties of the center or the board shall be held confidential as provided in ORS 192.553 to 192.581 and 433.008.

(8) The functions of the board do not supersede the regulatory authority of any agency and are not in lieu of the regulatory authority of any agency. [1991 c.729 §2;

2001 c.2 §1; 2003 c.86 §14; 2009 c.595 §1040; 2011 c.545 §64; 2013 c.111 §3; 2015 c.833 §14]

634.555 Pesticide incident telephone line. (1) The State Department of Agriculture, in consultation with the Pesticide Analytical and Response Center, shall establish a pesticide incident telephone line for receiving, and facilitating the coordination of public entities' responses to, pesticide-related complaints by the public indicating possible health or environmental effects.

(2) The center shall develop and maintain standard operating procedures for use with the telephone line. The department, in consultation with the center and other affected public entities, shall periodically update the telephone line operating procedures to comply with any new standard operating procedures developed by the center. [2015 c.833 §15]

634.557 Biennial reporting of telephone line operations. The State Department of Agriculture shall report biennially to the Legislative Assembly regarding the operation of the pesticide incident telephone line required under ORS 634.555. The report may include, but need not be limited to, any recommendations of the department or the Pesticide Analytical and Response Center for legislation regarding the telephone line. [2015 c.833 §16]

634.600 Committee members; appointment; compensation and expenses; duties. (1) There is created the Minor Crops Advisory Committee in the State Department of Agriculture consisting of six members appointed by the Director of Agriculture and the coordinator of the Interregional Project Number 4 program at Oregon State University who shall be a permanent member.

(2) The director, as far as practicable, shall make appointments to the advisory committee so that the committee is representative of all segments of agriculture.

(3) Each appointed member shall serve a term of three years beginning July 1 of the year of appointment. A member shall continue to serve until a successor is appointed. Vacancies in office shall be filled by appointment for the unexpired term.

(4) The committee shall meet at the call of the chairperson or the Director of Agriculture. A majority of the members present at any meeting shall constitute a quorum, and a majority vote of the quorum at any meeting shall constitute an official act of the committee.

(5) At the first meeting after July 1 of each year, the committee shall select a chairperson. The Dean of the College of Agricultural Sciences of Oregon State University and the Director of Agriculture, or their representatives, shall be ex officio members without the right to vote.

(6) Members of the committee shall be eligible for compensation and expenses as provided in ORS 292.495.

(7) The committee shall:

(a) Advise the department in the administration of ORS 634.016 to 634.042 as relates to minor crop use registrations;

(b) Cooperate with the United States Department of Agriculture's Interregional Project Number 4 and the United States Environmental Protection Agency in obtaining federal registrations of pesticides for minor crop uses; and

(c) Maintain close contact between the department and agricultural producers regarding the need for research to support registration of pesticides for minor crops. [1989 c.709 §2]

634.650 Definitions for ORS 634.650 to 634.665. As used in ORS 634.650 to 634.665:

(1) "Integrated pest management" means a science-based decision-making process that:

(a) Identifies and reduces risks from pests and from pest management-related strategies;

(b) Coordinates the use of pest biology, environmental information and comprehensive technology to prevent unacceptable levels of pest damage by economical means and poses the least possible risk to people, property, resources and the environment; and

(c) Uses a pest management approach that focuses on the prevention of pests through a combination of techniques that may include, but need not be limited to:

(A) Surveillance and monitoring;

(B) Early detection and rapid response;

(C) Mechanical control;

(D) The selective use of pesticides;

(E) Cultural practices;

(F) Modified land management;

(G) Biological controls;

(H) Evaluation of the effects and efficacy of pest treatments; and

(I) Control practices selected and applied to achieve desired pest management objectives in a manner that minimizes risks to human health, nontarget organisms, native fish and wildlife habitat, watersheds and the environment.

(2) "Pest" means any vertebrate or invertebrate animal, pathogen, parasitic plant, weed or similar or allied organism which can cause disease or damage to crops, trees, shrubs, grasses or other plants, humans, animals or property. [1991 c.943 §1; 2013 c.289 §4]

634.653 Appointment of State Integrated Pest Management Coordinator. The Dean of the College of Agricultural Sciences of Oregon State University shall appoint a faculty member of the college who has administrative and technical experience in integrated pest and production management matters to act as the State Integrated Pest Management Coordinator. The coordinator shall serve at the pleasure of the dean. [2013 c.289 §2]

Note: See note under 634.650.



634.655 Policy. The Legislative Assembly declares that it is the policy of the State of Oregon to require all state agencies that have pest control responsibilities to follow the principles of integrated pest management. [1991 c.943 §2]

Note: See note under 634.650.

634.657 Integrated Pest Management Coordinating Committee; purposes; report; funding. (1) There is established an Integrated Pest Management Coordinating Committee, consisting of:

- (a) The State Integrated Pest Management Coordinator;
- (b) The integrated pest management coordinator for each state agency listed in ORS 634.660;
- (c) A representative of public universities listed in ORS 352.002, appointed by the Higher Education Coordinating Commission; and
- (d) The integrated pest management coordinator for each public university listed in ORS 352.002.

(2) The State Integrated Pest Management Coordinator shall chair the committee. The committee may elect a vice chair. The committee may assign duties to the chair and vice chair and provide them with the powers necessary to perform those duties.

(3) A majority of the committee members is a quorum for the purpose of conducting business. Action by the committee requires approval by a majority of the committee members.

(4) The committee shall meet three times per year at the call of the chair for the purposes of:

- (a) Sharing information concerning the latest methods and approaches to integrated pest management used to reduce the risks posed by pests and concerning strategies related to pest management;
- (b) Sharing information concerning program successes and knowledge gained in the implementation of integrated pest management programs;
- (c) Developing an adaptive management approach to the improvement of integrated pest management by state agencies and public universities;
- (d) Identifying issues regarding risk reduction and evolving innovative approaches to addressing the issues;
- (e) Reporting on, and developing a set of performance metrics to adequately describe, state agency and public university progress in implementing integrated pest management;
- (f) Sharing information concerning the integrated pest management programs of each state agency or public university in order to foster information exchange concerning the latest technological advances and protocols and to promote a consistent format for the programs;
- (g) Achieving reductions in risks from pests and from strategies relating to pest management; and
- (h) Evaluating the need for notification of pesticide use and the policies for notification as part of state agency and public university integrated pest management programs.

(5) In addition to the meetings required under subsection (4) of this section, the committee may convene as the committee deems appropriate for the purpose of coordinating state integrated pest management efforts with the work of the Invasive Species Council. The committee and the council shall jointly address the technical and management approach challenges shared by programs to reduce risks from pests and reduce threats from invasive species.

(6) The committee may identify threats of common interest to the committee and the council, determine the resources needed for addressing the threats and provide the information to state agencies and public universities.

(7) The committee shall prepare a biennial report to an interim committee of the Legislative Assembly relating to pest management matters. The report shall describe the status of state agency and public university integrated pest management programs. The committee shall biennially provide an opportunity for public comment and input for the report. The report on the state agency and public university integrated pest management programs shall include, but need not be limited to:

(a) A description of the meetings, if any, between the State Integrated Pest Management Coordinator and state agencies or public universities;

(b) A description of the meetings of the committee;

(c) A description of advances, innovations and training activities in methodologies for reducing risks from pests;

(d) A description of key problem matters, the approaches taken to address the matters and concerns remaining outstanding;

(e) Performance metric results for the implementation of integrated pest management, including but not limited to state agency and public university progress toward the goal of protecting the economy, ecosystems and water quality of this state and protecting the health and welfare of children, the elderly and other members of the public;

(f) The integrated pest management program status of each state agency and public university that uses state-owned or leased property;

(g) Examples of cost-savings and expenditures resulting from integrated pest management program implementation; and

(h) Any recommendations for integrated pest management program improvements, including but not limited to any proposals for revising the definition of "integrated pest management."

(8)(a) The committee may seek funding from public or private sources to enable the committee to develop pest risk and integrated pest management metrics or to develop new technologies, strategies and approaches for addressing specific pest threats. Unless restricted by the donor, the committee may use moneys donated under this subsection for any purpose described in this subsection.

(b) The State Department of Agriculture may accept funds donated under this subsection on behalf of the committee. The moneys shall be credited to a subaccount within the Department of Agriculture Service Fund and, notwithstanding ORS 561.144 and 634.326, shall be dedicated for funding activities of the committee. The Director of Agriculture shall draw warrants for the issuance of payments from the account as authorized by vote of a majority of the committee. [2013 c.289 §3; 2015 c.767 §206]

Note: See note under 634.650.

634.660 Agencies and universities required to implement integrated pest management. Each of the following state agencies or public universities shall implement integrated pest management practices when carrying out duties of the agency or public university related to pest control:

- (1) State Department of Agriculture.
- (2) State Department of Fish and Wildlife.
- (3) Department of Transportation.
- (4) State Parks and Recreation Department.
- (5) State Forestry Department.
- (6) Department of Corrections.
- (7) Oregon Department of Administrative Services.
- (8) Department of State Lands.
- (9) Department of Environmental Quality.
- (10) Oregon Health Authority.
- (11) Each public university listed in ORS 352.002, for the public university's own building and grounds maintenance. [1991 c.943 §3; 2003 c.14 §391; 2011 c.637 §277; 2013 c.289 §5]

Note: See note under 634.650.

634.665 Agencies and universities to provide personnel training; appointment of coordinators; duties. (1) Each state agency or public university listed or referred to under ORS 634.660 shall provide integrated pest management training for employees responsible for pest management.

(2) Each state agency or public university listed or referred to under ORS 634.660 shall designate an integrated pest management coordinator. The integrated pest management coordinator:

- (a) Must be a state or public university employee;
- (b) Shall manage the integrated pest management program of the agency or public university; and
- (c) May serve more than one state agency or public university. [1991 c.943 §4; 2001 c.413 §11; 2013 c.289 §6]

Note: See note under 634.650.

634.700 Definitions for ORS 634.700 to 634.750. As used in ORS 634.700 to 634.750:

(1) "Campus" means the buildings, other structures, playgrounds, athletic fields and parking lots of a school and any other areas on the school property that are accessed by students on a regular basis.

(2) "Governing body" means a board of directors, agency or other body or person having policymaking and general oversight responsibility for a community college

district, education service district, school district, other unit of education governance, private school or other educational entity.

(3) "Integrated pest management plan" means a proactive strategy that:

(a) Focuses on the long-term prevention or suppression of pest problems through economically sound measures that:

(A) Protect the health and safety of students, staff and faculty;

(B) Protect the integrity of campus buildings and grounds;

(C) Maintain a productive learning environment; and

(D) Protect local ecosystem health;

(b) Focuses on the prevention of pest problems by working to reduce or eliminate conditions of property construction, operation and maintenance that promote or allow for the establishment, feeding, breeding and proliferation of pest populations or other conditions that are conducive to pests or that create harborage for pests;

(c) Incorporates the use of sanitation, structural remediation or habitat manipulation or of mechanical, biological and chemical pest control measures that present a reduced risk or have a low impact and, for the purpose of mitigating a declared pest emergency, the application of pesticides that are not low-impact pesticides;

(d) Includes regular monitoring and inspections to detect pests, pest damage and unsanctioned pesticide usage;

(e) Evaluates the need for pest control by identifying acceptable pest population density levels;

(f) Monitors and evaluates the effectiveness of pest control measures;

(g) Excludes the application of pesticides on a routine schedule for purely preventive purposes, other than applications of pesticides designed to attract or be consumed by pests;

(h) Excludes the application of pesticides for purely aesthetic purposes;

(i) Includes school staff education about sanitation, monitoring and inspection and about pest control measures;

(j) Gives preference to the use of nonchemical pest control measures;

(k) Allows the use of low-impact pesticides if nonchemical pest control measures are ineffective; and

(L) Allows the application of a pesticide that is not a low-impact pesticide only to mitigate a declared pest emergency or if the application is by, or at the direction or order of, a public health official.

(4) "Low-impact pesticide" means a product that does not contain a pesticide product or active ingredient described in ORS 634.705 (5).

(5) "Pest" means:

(a) An insect or other arthropod;

(b) A weed, moss, slime or mildew or a plant disease caused by a fungus, bacterium or virus;

(c) A nematode, snail, slug, rodent or predatory animal;

(d) A bacterium, spore, virus, fungus or other microorganism that is harmful to human health; or

(e) Other forms of plant or animal life that may infest or be detrimental to vegetation, humans, animals, structures, managed landscapes or other human environments.

(6) "Pest emergency" means an urgent need to eliminate or mitigate a pest situation that threatens:

(a) The health or safety of students, staff, faculty members or members of the public using the campus; or

(b) The structural integrity of campus facilities.

(7) "Registration number" means the pesticide registration number assigned by the United States Environmental Protection Agency.

(8) "School" means:

(a) A facility operating an Oregon prekindergarten or a federal Head Start program;

(b) A public or private educational institution offering education in all or part of kindergarten through grade 12;

(c) An education service district as defined in ORS 334.003;

(d) A community college as defined in ORS 341.005, for the community college's own buildings and ground maintenance;

(e) The Oregon School for the Deaf; and

(f) A regional residential academy operated by the Oregon Youth Authority. [2009 c.501 §2; 2011 c.9 §82; 2013 c.241 §3]

634.705 Adoption of integrated pest management plan and related provisions; exceptions; low-impact pesticide list. (1) The governing body responsible for a school shall adopt an integrated pest management plan for use on the campuses of the school. The governing body shall also adopt provisions for:

(a) Designating an integrated pest management plan coordinator;

(b) Identifying plan coordinator responsibilities;

(c) Giving notices under ORS 634.740;

(d) Retaining pesticide application records under ORS 634.750;

(e) Providing a process for responding to inquiries and complaints about noncompliance with the integrated pest management plan; and

(f) Conducting outreach to the school community about the school's integrated pest management plan.

(2) If a governing body has control over only part of a building, a structure or property where a campus is located, the governing body may limit an integrated pest management plan to those parts of the building, structure or property over which the governing body exerts substantial control.

(3) A governing body is not required to adopt an integrated pest management plan for off-campus buildings, structures or property, notwithstanding any incidental use for instruction.

(4) Unless a governing body expressly provides otherwise, the application of a germicide, disinfectant, sanitizer, deodorizer, antimicrobial agent or insecticidal soap at a campus is not subject to the requirements for a pesticide application under an integrated pest management plan. However, this subsection does not permit the application at a campus of a germicide, disinfectant, sanitizer, deodorizer, antimicrobial agent or insecticidal soap that is a pesticide in a manner that is inconsistent with the goal of the integrated pest management plan.

(5) A governing body shall adopt a list of low-impact pesticides for use with the integrated pest management plan. The governing body may include any product on the list except products that:

(a) Contain a pesticide product or active ingredient that has the signal words “warning” or “danger” on the label;

(b) Contain a pesticide product classified as a human carcinogen or probable human carcinogen under the United States Environmental Protection Agency 1986 Guidelines for Carcinogen Risk Assessment; or

(c) Contain a pesticide product classified as carcinogenic to humans or likely to be carcinogenic to humans under the United States Environmental Protection Agency 2003 Draft Final Guidelines for Carcinogen Risk Assessment. [2009 c.501 §3]

634.710 Plan selection. A governing body may adopt, improve or continue any integrated pest management plan that provides protection against pesticide exposure equal to or greater than the protection against pesticide exposure required by ORS 634.700 to 634.750. [2009 c.501 §9]

634.720 Plan coordinators. (1) The governing body shall provide for the designation of one or more persons as integrated pest management plan coordinators for the governed schools. A plan coordinator must be an employee of the governed district, unit, school or entity, unless the governing body delegates pest management duties to an independent contractor. Each school shall have the services of at least one integrated pest management plan coordinator. A plan coordinator may serve more than one school. The responsibilities of the plan coordinator shall include, but need not be limited to:

(a) Giving notice and posting warnings under ORS 634.740;

(b) Overseeing pest prevention efforts;

(c) Providing for the identification and evaluation of pest situations;

(d) Determining the means of appropriately managing pest damage that will cause the least possible hazard to people, property and the environment;

(e) Ensuring the proper and lawful performance of pesticide applications;

(f) Evaluating pest management results; and

(g) Keeping records as required by ORS 634.750.

(2) A plan coordinator shall complete not less than six hours of training each year. The training shall include at least a general review of integrated pest management principles and the requirements of ORS 634.700 to 634.750. [2009 c.501 §4]

634.725 Application of low-impact pesticide. If a school has followed the integrated pest management plan and nonchemical pest control measures were ineffective, subject to ORS 634.730 the integrated pest management plan coordinator may authorize the application of a low-impact pesticide. The low-impact pesticide application must be made by a pesticide applicator or by a public applicator. The use of a pesticide

applicator or public applicator to make an application does not cancel, alter or reassign any of the duties imposed under ORS 634.740 or 634.750. [2009 c.501 §5]

634.728 Pesticides used at community colleges for research or instruction. ORS 634.700 to 634.750 do not limit or prohibit the use of pesticides at a community college for purposes of scientific research or academic instruction. [2013 c.241 §2]

634.730 Reentry into sprayed area; exception; declaration of pest emergency. (1) Subject to subsection (2) of this section:

(a) If the labeling of a pesticide product specifies a reentry time, a pesticide may not be applied to an area of a campus where the school expects students to be present before expiration of that reentry time.

(b) If the labeling of a pesticide product does not specify a reentry time, a pesticide may not be applied to an area of a campus where the school expects students to be present before expiration of a reentry time that the integrated pest management plan coordinator determines to be appropriate based on the times at which students would normally be expected to be in the area, area ventilation and whether the area will be cleaned before students are present.

(2)(a) The application restrictions described in subsection (1) of this section do not apply if the pesticide is applied outdoors by a pesticide applicator or public applicator as a component of academic instruction in agriculture.

(b) The application restrictions described in subsection (1)(b) of this section do not apply if the integrated pest management plan coordinator declares a pest emergency under subsection (3) of this section.

(3) An integrated pest management plan coordinator, after consultation with school faculty and administration, may declare the existence of a pest emergency. If necessary, a pesticide other than a low-impact pesticide may be used to mitigate a declared pest emergency. If a pesticide is applied at a campus due to a pest emergency, the plan coordinator shall review the integrated pest management plan to determine whether modification of the plan might prevent future pest emergencies. The plan coordinator shall submit any recommendations for modification of the plan to the governing body. The governing body shall review and take formal action on the recommendations. [2009 c.501 §6]

634.740 Written notice requirements; warning signs; failure to notify or warn. (1) The governing body responsible for a school shall adopt policies and processes for ensuring that the integrated pest management plan coordinator for the school, or a designee of the coordinator, gives written notice of a proposed pesticide application at the campus to, at a minimum, parents and guardians of minor students, adult students, school administrators, faculty members and staff members. The plan coordinator or designee may give a written notice described in this subsection by any reasonable means, including but not limited to, electronic mail.

(2) In adopting policies and processes under subsection (1) of this section, the governing body shall consider the age of the students attending the school and consider which methods for transmitting notice are most likely to reach the intended recipients.

(3) Except as provided in this subsection, the plan coordinator or designee must give a pesticide application notice in a manner reasonably calculated to reach the intended recipient at least 24 hours before the pesticide application occurs. A notice must identify the name, trademark or type of pesticide products, the registration number assigned to each of the pesticide products, the expected area of application, the expected date of application and the reason for the application. If a pest emergency makes it impracticable to give a pesticide application notice at least 24 hours before the pesticide application occurs, the plan coordinator or designee shall send the notice no later than 24 hours after the application occurs.

(4) Except as provided in this subsection, if a pesticide is applied at a campus, the plan coordinator or a designee of the coordinator shall place warning signs around pesticide application areas beginning no later than 24 hours before the application occurs and ending no earlier than 72 hours after the application occurs. A warning sign must bear the words "Warning: pesticide-treated area," give the expected or actual date and time for the application and provide the telephone number of a contact person. If a pest emergency makes it impracticable to place the warning signs at least 24 hours before the pesticide application, the plan coordinator or designee shall place the signs as soon as practicable but no later than at the time the application occurs.

(5) Failure to give notice or post warnings as required by this section does not create a cause of action for damages and may not be asserted as the basis for a per se negligence claim. [2009 c.501 §7]

634.750 Pesticide application records. (1) If a pesticide is applied at a campus, the integrated pest management plan coordinator or a designee of the coordinator shall place the labeling information and material data safety sheet for the pesticide on file at a school on the campus. The plan coordinator or designee shall record and make available the following information:

- (a) The brand name or trademark of the pesticide product;
- (b) The United States Environmental Protection Agency registration number assigned to the pesticide product;
- (c) The pest condition that prompted the application;
- (d) A description of the area on campus where the application occurred;
- (e) The approximate amount and concentration of pesticide product applied;
- (f) The type of application and whether the application proved effective;
- (g) The pesticide applicator or public applicator license numbers and pesticide trainee or public trainee certificate numbers of the persons applying the pesticide;
- (h) The names of the persons applying the pesticide;
- (i) The dates on which the plan coordinator gave any notices required by ORS 634.740; and
- (j) The dates and times for the placement and removal of warning signs under ORS 634.740.



(2) Pesticide application records must include copies of all notices given under ORS 634.740.

(3) A school shall retain pesticide application records required by this section for at least four years following the application date. [2009 c.501 §8]

634.900 Penalty for certain violations; amount. (1) In addition to any other liability or penalty provided by law, the Director of Agriculture may impose a civil penalty on a person for violation of any of the provisions of this chapter relating to pesticide application, sale or labeling. The civil penalty for a first violation shall be not more than \$2,000. For a subsequent violation, the director may impose a civil penalty of not more than \$4,000.

(2) Notwithstanding subsection (1) of this section, if the violation of a provision relating to pesticide application, sale or labeling results from gross negligence or willful misconduct, the civil penalty for a first or subsequent violation may not exceed \$10,000.

(3) A civil penalty may not be imposed under this section for violations other than those involving pesticide application, sale or labeling violation under this chapter.

**(4) Notwithstanding subsections (1) through (3) of this section, the director of may impose a civil penalty on a person for violation of any of the provisions of this chapter related to restricted-use pesticides, or for violation of any rules adopted pursuant to this chapter related to restricted-use pesticides.**

634.905 When penalty payable; notice; hearing. (1) Any civil penalty under ORS 634.900 shall be imposed as provided in ORS 183.745.

(2) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 10 days from the date of service of the notice in which to make written application for a hearing before the Director of Agriculture. [1989 c.943 §3; 1991 c.734 §57; 1999 c.59 §186]

634.910 Reduction of penalty; criteria. A civil penalty imposed under ORS 634.900 may be remitted or reduced upon such terms and conditions as the Director of Agriculture considers proper and consistent with the public health and safety. [1989 c.943 §4]

634.915 Schedule for penalty amounts; criteria; rules. (1) The State Department of Agriculture shall adopt by rule a schedule establishing the amount of civil penalty that may be imposed for a particular violation.

(2) In imposing the penalty pursuant to the schedule authorized by this section, the Director of Agriculture shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

- (b) Any prior violations of statutes, rules or orders pertaining to pesticide application, sale or labeling.
- (c) The gravity and magnitude of the violation.
- (d) Whether the violation was repeated or continuous.
- (e) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.
- (f) The violator's cooperativeness and efforts to correct the violation.
- (g) The immediacy and extent to which the violation threatens the public health or safety. [1989 c.943 §5]

634.925 Disposition of penalties collected. All penalties recovered under ORS 634.900 to 634.915 shall be deposited by the State Treasurer in the Department of Agriculture Service Fund. Such moneys are continuously appropriated to the State Department of Agriculture to be used for information and education related to pesticide application. [1989 c.943 §8]

634.992 Criminal penalties. Violation of any of the provisions of this chapter **or any rules adopted by the department related to restricted use pesticides** is a Class A misdemeanor.

## **Supervision Requirements**

In addition to all other applicable requirements of Division 57, a pesticide applicator or public applicator supervising the application of any pesticide; or a pesticide applicator, public applicator or private applicator supervising the use of a pesticide classified by the Department as restricted-use or highly toxic, must ensure each of the following prior to the pesticide use:

- (1) The supervising pesticide applicator, public applicator, or private applicator has the appropriate license and license category for the specific pesticide use.**
- (2)(a) Supervisee is at least 18 years of age, or**  
**(b) Supervisee is at least 16 years of age, and**
  - (A) Using a pesticide not classified as a fumigant by the United States Environmental Agency, and**
  - (B) Supervised by an immediate family member who is a certified and licensed private applicator;**
- (3) Supervisee has demonstrated a basic knowledge of pesticide laws and safety by meeting one of the following criteria prior to the pesticide use and the supervisor has access to the associated records described in subsection (12) of this rule:**
  - (a) Supervisee successfully completed an examination within the past 60 months prior to pesticide use that meets the competency standards described in OAR 603-057-0120 and that was approved by the Department for this purpose;**
  - (b) Supervisee is currently licensed as a pesticide apprentice, or as a private applicator, pesticide applicator or public applicator without the appropriate license category;**
  - (c) Supervisee has completed an agricultural handler training as described in 40 CFR 170.501 within the last 12 months; or**
  - (d) Supervisee has completed a training approved by the Department for this purpose that meets or exceeds the criteria in the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register: 40 CFR 171.201(d) Noncertified applicator training program, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1041;**
- (4) Supervisee has access to the applicable pesticide labeling at all times during its use, and the supervisee is able to read and fully understand the labeling or have access to an individual who can explain the labeling;**

**(5) Supervisee has been instructed within the last 12 months in the safe operation of any equipment they will use for mixing, loading, transferring, or applying pesticides;**

**(6) Supervisee has clean, labeling-required personal protective equipment in proper operating condition and that the personal protective equipment is worn and used correctly for mixing, loading, application, or any other use activities;**

**(7) Prior to pesticide use, the supervising applicator must provide to each supervisee use instructions specific to the site and pesticide used. These instructions must include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (e.g., surface and ground water, endangered species, local population) and the conditions of application (e.g., equipment, method of application, formulation) might increase or decrease the risk of adverse effects. The supervising applicator must provide this information in a manner that the supervisee can understand;**

**(8) Prior to each day of use, equipment used for mixing, loading, transferring, or applying pesticides is inspected and ensured to be in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the supervisee, other persons, or the environment;**

**(9) There is a means to immediately and fully communicate with each supervisee under his or her direct supervision and there is the ability to provide adequate supervision;**

**(10) The supervisee is using the pesticide in such proximity to their supervising applicator that such supervising applicator is reasonably available for any needed in-person consultation or assistance, even though such supervising applicator may not be physically present during the pesticide use;**

**(11) The supervising applicator must be physically present at the site of the use being supervised when required by the product labeling; and**

**(12) The supervising applicator must have access to records demonstrating that the supervisee has met one of the training criteria described in subsection (3) of this rule. Access to these records must be maintained for at least two years from the date of pesticide use, at least three years from the date training requirements are met, or as otherwise specified. Records must be available during business hours for review and inspection by the department. The specific records required depend on the training criteria met and are as follows:**

**(a) If pesticide training requirements are met by examination, as described in subsection (3)(a) of this rule, then access to the following records are required for 5 years from the date of successfully completing the examination:**

**(A) Trainee's printed name; and**

**(B) Date of successfully completion of the examination; and**

**(C) Name of examination.**

**(b) If pesticide training requirements are met by maintaining an appropriate license, as described in subsection (3)(a) of this rule, then access to the following records are required:**

**(A) Trainee's printed name; and**

**(B) License number and license expiration date; and**

**(C) Name of agency that issued the license.**

**(c) If pesticide training requirements are met by completing agricultural handler training, as described in subsection (3)(c) of this rule, then the following records are required:**

**(A) Trainee's printed name and signature; and**

**(B) Date of training; and**

**(C) Information identifying which training materials approved by the US Environmental Protection Agency were used; and**

**(D) The trainee employer's name; and**

**(E) The trainer's name and documentation that the trainer is appropriately qualified.**

**(d) If pesticide training requirements are met by completing another approved training, as described in subsection (3)(d) of this rule, then the following records are required:**

**(A) Trainee's printed name and signature; and**

**(B) Date of training and name of trainer; and**

**(C) The title or description of the training provided.**

## 603-057-YYYY

The licensing exemptions in ORS 634.106(2) and 634.106(5)-(7) do not apply to persons using pesticides classified as restricted use or highly toxic, as those terms are defined in 634.006.

### 603-057-0001

#### Definitions

In addition to the definitions set forth in ORS 634.006, the following shall apply (1) "Accident" means an undesirable and unintended event, caused by the use or application of pesticides, that adversely affects the environment.

(2) "Compatibility" means the properties of a pesticide that permit its use with other chemicals without undesirable results being caused by such combination.

(3) "Competence" means the proficiency in the performance of activities related to pesticide application, the degree of which is directly related to the nature of such activities.

(4) "Common Exposure Route" means a likely way (oral, dermal, respiratory) by which a pesticide may enter an organism.

(5) "Environment" means water, air, land and plants, humans, or other animals living therein or thereon, and the interrelationships existing among them.

(6) For the purpose of pesticide registration as specified in ORS 634.016, "pesticide product" means a pesticide readily distinguishable from any other pesticide by its content, registration number assigned by the United States Environmental Protection Agency, brand name, trade name, manufacturer, registrant, use as specified in labeling, or other distinction, but not including size or quantity of package.

(7) "Non-Target Organism" means plant or animal life other than to which the pesticide is applied or is intended to be applied.

(8) "Regulated Pest" means a specific organism determined by the Department to be a pest requiring control, or eradication in order to protect the environment.

(9) For the purposes of ORS 634.006(9)(c), **634.006(15)**, 634.106(7), 634.126(1)(c), 603-057-0001(11), and 603-057-0127, the terms "direct charge of," "supervises," "direct supervision," or "supervision" means that **application of pesticides or use of pesticides classified by the department as restricted-use or highly toxic occurs under the conditions described in OAR 603-057-XXXX.**

~~(a) The supervisor of the person applying a pesticide has determined that the person applying a pesticide has sufficient knowledge and ability to safely apply the particular pesticide according to its label directions and any other additional directions;~~

~~(b) The person applying a pesticide is applying the particular pesticide under the instructions of their supervisor; and~~

~~(c) The person applying a pesticide is applying the pesticide in such proximity to their supervisor that such supervisor is reasonably available for any needed consultation or further direction, even though such supervisor is not physically present at the time or place of the pesticide application.~~

(10) For the purposes of OAR 603-057-0106, "Immediate Supervision" means supervision by an appropriately licensed applicator who is:

(a) Located on the pesticide ~~use~~application site at all times during the ~~use~~application; and

(b) Available at the specific point of pesticide use within a time period of no more than five minutes.

(11) "Pesticide Apprentice" is a type of pesticide trainee or a type of public trainee, as those terms are defined in ORS 634.006(14) and (18), that engages in pesticide application activities under the supervision of a licensed pesticide applicator or a licensed public applicator as described in OAR 603-057-0127. A pesticide apprentice is limited to the categories of pesticide application authorized on the applicator license of the supervisor.

(12) For the purposes of subsection (9) of this rule **OAR 603-057-XXXX**, "supervising applicator" means a person that is responsible for the actions of a person applying a pesticide, or using a pesticide classified by the Department as restricted-use or highly toxic.

(13) For the purposes of ORS 634 and this division of administrative rules, the terms "use", "uses", "using", and "pesticide application activities" mean any of the following:

(a) Pre-application activities involving mixing and loading the pesticide;

(b) Carrying out an application, spraying, or otherwise applying the pesticide;

(c) Other pesticide-related activities, including, but not limited to, transporting or storing pesticide containers that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials. This subsection shall not be construed to include transporting or storing of pesticide containers that have not been previously opened and lawful disposal-related transportation by personal waste transporters, commercial waste haulers and disposal facilities.

Statutory/Other Authority: ORS 561.190 & 634

Statutes/Other Implemented: ORS 634.306

History:

DOA 16-2012, f. & cert. ef. 6-1-12

DOA 2-2012, f. 1-13-12, cert. ef. 1-1-13

AD 12-1992, f. 10-13-92, cert. ef. 1-1-93

AD 17, f. & cert. ef. 11-15-89

#### 603-057-0006

##### Pesticide Registration Fees

(1) The annual registration fee for each pesticide product for calendar year 2015 shall be \$160.

(2) Beginning for 2016 pesticide product registration, the annual registration fee for each pesticide product shall be \$320.

Statutory/Other Authority: ORS 634; HB 3549 (2015); HB 5002 (2015); and SB 5507 (2015)

Statutes/Other Implemented: ORS 634, HB 3549 (2015), HB 5002 (2015) & and SB 5507 (2015)

History:

DOA 10-2015, f. & cert. ef. 10-7-15

DOA 21-2012, f. & cert. ef. 7-10-12

DOA 3-2006, f. & cert. ef. 3-8-06

DOA 17-2005(Temp), f. 10-14-05, cert. ef. 1-1-06 thru 6-29-06

DOA 42-2003, f. & cert. ef. 12-23-04

Reverted to DOA 40-2003, f. & cert. ef. 10-17-03

DOA 41-2003(Temp), f. 11-14-03, cert. ef. 11-23-03 thru 5-20-04

DOA 38-2003(Temp), f. 10-15-03 cert. ef. 11-23-03 thru 5-19-04

DOA 40-2003, f. & cert. ef. 10-17-03

DOA 26-2001, f. & cert. ef. 11-6-01

DOA 21-1999, f. 9-30-99, cert. ef. 11-1-99

AD 17, f. & cert. ef. 11-15-89

AD 24-1981, f. & ef. 12-1-81

AD 7-1977, f. & ef. 4-5-77

AD 1014(4-74), f. 1-18-74, ef. 2-11-74

AD 1008(22-73)(Temp), f. & ef. 12-5-73

AD 855(27-67), f. 10-9-67, ef. 1-1-68

#### 603-057-0100

##### License Fees

The following designated annual fees shall be applicable to each described license:



- (1) Pesticide Operator: \$90 including one category; \$15 for each additional category; and \$20 for each additional category after license issued.
- (2) Pesticide Applicator: \$50 including one category; \$7.50 for each additional category; and \$12.50 for each additional category after license issued.
- (3) Pesticide Trainee or Apprentice: Same as pesticide applicators.
- (4) Public Applicator, Trainee or Apprentice: Same as pesticide applicators.
- (5) Pesticide Dealer: \$75, with a separate license required for each sales outlet or location.
- (6) Pesticide Consultant: \$40.

Statutory/Other Authority: ORS 561 & 634

Statutes/Other Implemented: ORS 634.116, 634.122, 634.126, 634.132 & 634.136

History:

DOA 16-2012, f. & cert. ef. 6-1-12

DOA 2-2012, f. 1-13-12, cert. ef. 1-1-13

DOA 39-2003, f. 10-17-03, cert. ef. 11-15-03

AD 24-1981, f. & ef. 12-1-81

AD 7-1977, f. & ef. 4-5-77

AD 1001(15-73), f. 11-20-73, ef. 12-11-73

603-057-0102

Pesticide Operator Financial Responsibility

As provided in subsections (5) and (6) of ORS 634.116, the following shall apply:

- (1) Evidence of the issuance of a public liability policy of insurance may be documented to the Department by a pesticide operator either by furnishing a copy of said policy or furnishing a certificate of insurance issued by the insurer. Should said policy be subsequently endorsed or in any manner modified as to the protection offered thereby, the Department shall be furnished a copy of the policy endorsement or be furnished an additional certificate of insurance evidencing the modifications.
- (2) The public liability policy of insurance may be limited to only injuries or damages caused by the specific activities for which the pesticide operator is licensed. Should the pesticide operator subsequently become licensed in additional categories of activities, the pesticide operator shall furnish the Department the documentation described in section (1) of this rule evidencing additional protection for such additional categories.
- (3) As provided in subsection (10) of ORS 634.116, a pesticide operator engaged in the business of applying pesticides by aircraft may have his public liability policy of

insurance limited to the time period within which such pesticide operator is actually engaged in the application of pesticides by aircraft, subject to the following:

- (a) The Department is furnished the documentation required by section (1) of this rule; and
- (b) The public liability policy of insurance identifies the specific aircraft to which it applies.

Statutory/Other Authority: ORS 561 & 634  
Statutes/Other Implemented: ORS 634.116  
History:  
AD 7-1977, f. & ef. 4-5-77

603-057-0106

Immediately Supervised Pesticide Trainee

- (1) There is herewith established a type of pesticide trainee license and a type of public trainee license which shall bear the designation "Immediately Supervised Trainee."
- (2) An immediately supervised pesticide trainee license may only be issued upon receipt by the department of:
  - (a) An appropriately completed license application form; and
  - (b) Payment of the appropriate fee.
- (3) The fee for an immediately supervised pesticide trainee license shall be the same as the fee for a pesticide trainee license.
- (4) An immediately supervised pesticide trainee license shall expire on December 31 of the year of issuance, or of the following year if issued a license for two consecutive years.
- (5) An immediately supervised trainee license authorizes the holder to conduct pesticide application activities under the immediate supervision of an appropriately licensed supervisor as detailed in OAR 603-057-0001 and **OAR 603-057-XXXX**. The immediately supervised pesticide trainee may ~~use~~apply pesticides only in the categories listed under the supervisor's license. If the supervisor is a licensed public applicator, the immediately supervised pesticide trainee or immediately supervised public trainee may only ~~use~~apply pesticides as described in ORS 634.116(12).
- (6) An immediately supervised pesticide trainee license may be renewed.

(7) For each pesticide application made by an immediately supervised pesticide trainee, a pesticide application record, as required by ORS 634.146 and OAR 603-057-0130, must be made that also contains the names and pesticide license numbers of the trainee(s) and their supervisor(s). The employer of the trainee shall retain the record for a period of three years and release them to the department for inspection as required or authorized by ORS chapters 561 or 634 or rules adopted thereunder.

(8) An immediately supervised pesticide trainee license does not authorize the holder to conduct pesticide applications by ~~helicopter or fixed-wing~~ aircraft.

(9) For purposes of this section, "an appropriately licensed supervisor" is:

(a) A licensed pesticide applicator, or licensed public applicator;

(b) Licensed in the category, or categories, in which the immediately supervised pesticide trainee is currently engaged.

(10) Any immediately supervised pesticide trainee conducting pesticide application activities without an appropriately licensed supervisor, without an appropriately licensed supervisor on the site where the application is being made, or who is unable to identify their supervisor, will be considered unlicensed and subject to enforcement actions in accordance to ORS 634.900.

Statutory/Other Authority: ORS 561.190 & 634

Statutes/Other Implemented: ORS 634.306

History:

DOA 11-2012, f. 5-15-12, cert. ef. 1-1-13

AD 12-1992, f. 10-13-92, cert. ef. 1-1-93

#### 603-057-0108

#### Aerial Applications Generally

(1) A person may not spray or otherwise apply a pesticide by aircraft unless the person is an individual that holds a valid aerial pesticide applicator certificate issued by the Oregon Department of Agriculture.

#### Aerial Pesticide Applicator

(2) An aerial pesticide applicator certificate is a type of license.

(3) For 2016, an aerial pesticide applicator certificate may only be issued to an individual upon receipt and approval by the department of:

- (a) An appropriately completed license application form;
  - (b) Payment of the appropriate fee;
  - (c) Proof that the individual holds a valid commercial pilot certificate for the type of aircraft to be used by the aerial pesticide applicator in applying pesticides;
  - (d) Proof that the individual holds a valid pesticide applicator, public applicator, or private applicator license or certificate; and
  - (e) Proof, in the form of a sworn statement or a declaration that the individual has either:
    - (A) At least fifty (50) hours of experience as a licensed pesticide applicator, licensed public applicator or certified licensed private applicator on flights conducted for the purpose of carrying out spraying or otherwise applying pesticides by aircraft; or
    - (B) At least fifty (50) hours of flight training experience as a licensed pesticide applicator, licensed public applicator, or certified private applicator, or as a pesticide trainee or public trainee under the supervision of a licensed pesticide applicator, licensed public applicator, or certified licensed private applicator, on flights conducted for the purpose of carrying out, or training to carry out, spraying or otherwise applying pesticides by aircraft.
- (4) The department shall suspend or revoke the aerial pesticide applicator certificate if the certificate holder fails to maintain the valid pesticide applicator license, public applicator license or private applicator certificate that was the basis of obtaining the aerial pesticide applicator certificate.
- (5) The annual fee for an aerial pesticide applicator certificate shall be the same as the fee for pesticide applicators.
- (6) The certification period for an aerial pesticide applicator certificate issued for 2016 will expire on December 31, 2016.
- (7) As of January 1, 2017, the certification period for an aerial pesticide applicator certificate shall not exceed five years.
- (8) Beginning January 1, 2017, an aerial pesticide applicator certificate may only be issued to an individual upon receipt and approval by the department of:
- (a) An appropriately completed license application form;
  - (b) Payment of the appropriate fee;
  - (c) Proof that the individual holds a valid commercial pilot certificate for the type of aircraft to be used by the aerial pesticide applicator in applying pesticides;

(d) Proof that the individual holds a valid pesticide applicator, public applicator, or private applicator license or certificate;

(e) Proof, in the form of a sworn statement or a declaration that the individual has either:

(A) At least fifty (50) hours of experience as a licensed pesticide applicator, licensed public applicator or certified licensed private applicator on flights conducted for the purpose of carrying out spraying or otherwise applying pesticides by aircraft; or

(B) At least fifty (50) hours of flight training experience as a licensed pesticide applicator, licensed public applicator or certified licensed private applicator, or as a pesticide trainee or public trainee under the supervision of a certified aerial pesticide applicator, on flights conducted for the purpose of carrying out, or training to carry out, spraying or otherwise applying pesticides by aircraft; and

(f) Proof that the individual has passed a national examination, or other examination approved by the department, testing the knowledge of the individual regarding proper spraying and other application of pesticides by aircraft **the competencies contained in 40 CFR 171.103(d)(15) (1/4/2017).**

(9) An applicant for an aerial pesticide applicator certificate issued under OAR 603-057-0108 (7) shall be required to take a re-examination each fifth year after taking the original aerial pesticide applicator examination.

(10) If the department's records indicate that an applicant for certificate renewal has successfully completed during the preceding five years at least 10 credit hours in programs of instruction or educational courses satisfactory to the department and related to the spraying or other application of pesticides by aircraft:

(a) The department shall count any credit hours in satisfactory programs of instruction or educational courses as described above toward any instruction or education requirements imposed by the department for the issuance or renewal of a pesticide applicator or public pesticide applicator license.

(b) The department may not count any credit hours in satisfactory programs of instruction or educational courses described above toward any instruction or education requirements imposed by the department for the issuance or renewal of a private applicator's license.

(11) As of January 1, 2017, and for an individual, the certification period of their **aerial pesticide applicator certificate may be aligned with the certification period of their** pesticide applicator, public applicator or private applicator license ~~may be aligned with the certification period for their aerial pesticide applicator certificate.~~ **The alignment of certification periods shall not result in a certification period that is longer than five years for any license.**

(12) An aerial pesticide applicator that was certificated solely on the basis of a public applicator license shall not spray or otherwise apply pesticides by aircraft to any lands beyond those lands that he is authorized to spray or otherwise apply pesticides to from the ground.

(13) In order to be authorized to make aerial pesticide applications, a pesticide applicator that is also certificated as an aerial pesticide applicator, must be employed by a pesticide operator with an aerial endorsement or other similar specification assigned by the department.

Statutory/Other Authority: ORS 634.106, 634.112, 634.116, 634.122 & 634.126

Statutes/Other Implemented: ORS 634.128

History:

DOA 14-2016, f. & cert. ef. 6-28-16

#### 603-057-0110

#### Pesticide Operator, Applicator, and Trainee Categories

In accordance with subsection (2) of ORS 634.306, the following categories of pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees are established with licenses (or certificates) to be issued for such categories, or any specific subcategories established by OAR 603-057-0115:

(1) Agricultural Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in the production of agricultural **commodities** crops and livestock ~~(including Christmas tree plantations and commercial nurseries)~~, or on agricultural lands, grasslands, or non-crop agricultural lands.

(2) Aquatic Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in treating standing or running water, **excluding pesticide applications for the control of mosquitoes and other dipteran species of public health significance.**

(3) Demonstration and Research: This shall include pesticide operators, pesticide applicators, ~~pesticide trainees~~, public applicators and **pesticide consultants** public trainees who use or supervise the use of pesticides, or of any substance or mixture of substances that is being evaluated for use as a pesticide, for experiments or research such as for gathering data to satisfy registration requirements of the United States Environmental Protection Agency or of the ~~D~~department. **This category permits the use of pesticides for experimental or research use only when combined with**

**another appropriate category.** The exemption provided manufacturers under subsection (1) of ORS 634.106 only applies to laboratory research. The uses included in this category must be:

(a) Authorized by an experimental use permit issued by the United States Environmental Protection Agency;

(b) Authorized by an experimental use permit issued by the department as provided in OAR 603-057-0160; or

(c) By a federal or state agency that is exempt from obtaining an experimental use permit as provided in OAR 603-057-0160(2)(b).

(4) Forest Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in **forests, forest nurseries, or forest seed production.** ~~the production of forest crops, or on forestry lands (not including~~ **This category excludes** Christmas tree plantations **and** commercial nurseries).

(5) Industrial, Institutional, ~~Health, and~~ Structural Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in, on, or around food handling establishments, human dwellings, institutions (i.e., schools, hospitals, etc.), industrial establishments (including warehouses and grain elevators), and any other structures or areas utilized for the storing, processing, or manufacturing of products.

(6) Marine Fouling Organism Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of marine antifouling paint or coating on boat or ship hulls or other parts of boats or ships.

(7) Ornamental and Turf Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in the establishment and maintenance of ornamental plantings and turf (not including Christmas tree plantations, commercial nurseries or ~~forests-crops,~~ **forest nurseries, or forest production**). The exemption provided persons under subsection (5) of ORS 634.106 only applies to persons principally engaged in home lawn and garden care.

(8) Public Health Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides **in government-sponsored public health programs** for the control of any pest which may be deleterious to the public health, including mosquito and other vector control.

(9) Regulatory Weed ~~Pest~~ Control: This shall include public applicators and public trainees who use or supervise the use of pesticides **for the control of plants**

designated by local weed control districts or the Department as noxious weeds as set forth in **ORS 570.510** upon regulated pests not otherwise specified in this section.

(10) Right-of-Way Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in right-of-way areas, **such as, but not limited to, city, county and federal roads and highways; railroads and airports; electric utilities (transformer stations and substations, transmission lines and distribution lines); pipelines, banks of public bargeways and areas around locks and dams; and bicycle, bridle, snowmobile, and other public recreations paths.**

(11) Seed Treatment: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides on seed, as it is defined in subsection (1) of ORS 633.511. Treatment of a person's own seed on ~~their~~his own premises **with pesticides other than those classified as restricted use or highly toxic as defined in subsections (6) and (22) of ORS 634.006**, is exempt under subsections (9) and (13) of ORS 634.006.

(12) School Integrated Pest Management: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides on the campus of a school, as defined in ORS 634.700 and OAR 603-057-0500. School Integrated Pest Management does not include any of the following:

(a) The use of any pesticide in areas where the integrated pest management plan adopted by the school under 634.705 does not apply;

(b) The use of any pesticide for the purpose of controlling wood-destroying pests, such as, but not limited to, termites, carpenter ants, and powder post beetles;

(c) The use of any pesticide for the purpose of controlling the following public health pests: bed bugs, lice, fleas, ticks, and adult mosquitoes.

(d) The use of any pesticide by using power-driven pesticide application equipment or power-driven devices;

(e) The use of any highly toxic or restricted-use pesticide, as defined in ORS 634.006(5) and (22), respectively;

(f) The use of any pesticide that is not registered with the State Department of Agriculture, as described in ORS 634.016; or

(g) The use of any pesticide formulated or packaged as a total release fogger, which is a pressurized container designed to automatically release the total contents in one operation for the purpose of creating a permeating fog within a confined space to deliver



the pesticide throughout a space. Pesticide types listed in ORS 634.705(4) are excluded from this provision.

**(13) Non-Soil Fumigation:** This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of fumigants to fumigate anything other than soil, including, but not limited to, rodent burrows and enclosed or confined areas or structures.

**(14e) Soil Fumigation:** This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of soil-applied fumigants. ~~in the production of agricultural crops or on agricultural lands, grasslands, or non-crop agricultural lands;~~

**(15e) Vertebrate Pest Control:** This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in **any** agricultural areas, **except in or on standing or running water**, for control of vertebrate pests. **This category excludes the use of sodium cyanide and sodium fluoroacetate** ~~other than livestock predators.~~

**(16) Commercial Mosquito Vector Control:** This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in any location for the control of mosquitoes and other Diptera species of public health importance. This category excludes pesticide use in government-sponsored public health programs.

Statutory/Other Authority: ORS 634.306, 561 & 634

Statutes/Other Implemented: 634 & ORS 634

History:

DOA 2-2019, amend filed 01/23/2019, effective 01/23/2019

DOA 8-2009, f. & cert. ef. 7-15-09

AD 17-1990, f. & cert. ef. 10-2-90

Reverted to AD 12-1985, f. & ef. 11-27-85

AD 1-1990(Temp), f. & cert. ef. 3-1-90

AD 12-1985, f. & ef. 11-27-85

AD 7-1977, f. & ef. 4-5-77

AD 1066(12-75), f. 8-11-75, ef. 10-15-75

603-057-0115

Pesticide Operator, Applicator, and Trainee Subcategories

The following subcategories of pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees are hereby established within the categories set forth in OAR 603-057-0110:

(1) Under "Agricultural Pest Control":

(a) Insecticide and Fungicide: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of **non-fumigant pesticides** insecticides, fungicides, and/or nematocides **to control invertebrate animals and microorganism pests, excluding the use of herbicides, plant desiccants, plant defoliants, and plant growth regulators**, in the production of agricultural **commodities** crops, or on agricultural lands, grasslands, and non-crop agricultural lands. **This category does not cover pesticide use in or on running or standing water.**;

(b) Herbicides: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of **non-fumigant herbicides, desiccants, defoliants, and plant regulators** in the production of agricultural **commodities** crops, or on agricultural lands, grasslands, and non-crop agricultural lands. **This category does not cover pesticide use in or on running or standing water.**;

~~(c) Soil Fumigation: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of soil-applied fumigants in the production of agricultural crops or on agricultural lands, grasslands, or non-crop agricultural lands;~~

(d) (c) Livestock Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides **on livestock animals or in agricultural areas where livestock animals are confined for the control or eradication of such livestock pests including, but not limited to, as insects, mites and ticks. This category excludes the use of sodium cyanide and sodium fluoroacetate.**;

~~(e) Vertebrate Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in agricultural areas for control of vertebrate pests other than livestock predators.~~

(2) Under "Industrial, Institutional, Health, and Structural Pest Control":

(a) Pest Control, General: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides, other than fumigants, in, on, or around **food handling establishments, packing houses, and food-processing facilities; human dwellings, institutions, such as schools, hospitals, and prisons; and industrial establishments, including manufacturing facilities, warehouses, grain elevators, and any other structure and adjacent areas, public or private structures, institutions and establishments for the protection of stored, processed, and manufactured products or for the protection of human health. This category includes the use of appropriately labeled rodenticides in and around a structure to control commensal rodents;**

(b) Structural Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides, other than fumigants, in, on, or around **food handling establishments, packing houses, and food-processing facilities; human dwellings, institutions, such as schools, hospitals, and prisons; and industrial establishments, including manufacturing facilities, warehouses, grain elevators, and any other structure and adjacent areas, public or private** structures for the control of wood-destroying pests, **such as, but not limited to** ~~(i.e., termites, carpenter ants, and powder post beetles, etc.);~~

~~(c) Space Fumigation: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of fumigants in enclosed or confined areas or structures for the control of pests in structures, in stored food or feed, and in other agricultural products. Field treatment of utility poles, pilings, bridge supports, and similar elements of construction are excluded from this category;~~

(d) ~~(c)~~ Moss Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides for the control of moss and algae on **food handling establishments, packing houses, and food-processing facilities; human dwellings, institutions, such as schools, hospitals, and prisons; and industrial establishments, including manufacturing facilities, warehouses, grain elevators, and any other structure and adjacent areas, public or private** structures;

~~(e)~~ (d) Wood Treatment: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of **non-fumigant** pesticides to treat wood products (i.e., lumber, poles, ties, etc.) before the use of those products in construction, and to field treat utility poles, pilings, bridge supports, and similar elements of construction with **non-fumigants** ~~or other pesticides.~~

(3) Under "Ornamental and Turf Pest Control":

(a) Insecticide and Fungicide: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of **non-fumigant pesticides** ~~insecticides, fungicides, and/or nematocides, to control invertebrate animals and microorganism pests, excluding the use of herbicides, plant desiccants, plant defoliants, and plant growth regulators, insecticides and fungicides~~ in the establishment and maintenance of ornamental plantings and turf;

(b) Herbicide: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of **non-fumigant herbicides, desiccants, defoliants, and plant regulators** pesticides in the establishment and maintenance of ornamental plantings and turf.

~~(4) Under "Regulatory Pest Control":~~

~~(a) M-44 Device: This shall include only employees of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control, who are licensed as public applicators and who use the M-44 device containing sodium cyanide for the control of coyotes and certain other wild canids, which shall be in the manner as specified by the administrative rules of the Department;~~

~~(b) Livestock Protection Collar: This shall include only employees of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control, who are licensed as public applicators and who use the livestock protection collar containing sodium fluoroacetate (Compound 1080) for the control of coyotes, which shall be in the manner as specified by the administrative rules of the Department;~~

~~(c) Weed Control: This shall include public applicators and public trainees who use or supervise the use of pesticides for the control of plants designated by local weed control districts or the Department as noxious weeds as set forth in ORS 570.510.~~

Statutory/Other Authority: ORS 561 & 634

Statutes/Other Implemented: ORS 634.306(2)

History:

AD 6-1997, f. & cert. ef. 6-11-97

AD 10-1987, f. & ef. 7-1-87

AD 12-1985, f. & ef. 11-27-85

AD 7-1977, f. & ef. 4-5-77

AD 1066(12-75), f. 8-11-75, ef. 10-15-75

603-057-0120

General Standards of Pesticide Applicator Competence

(1) Competence in the use or handling of pesticides shall be determined on the basis of written examinations which, in addition to the requirements of OAR 603-057-0125, shall include the following general standards:

~~(a) Comprehension of labeling format, labeling terminology, and the labeled warnings and instructions;~~

~~(b) Knowledge of safety factors to be considered, including need and use of protective clothing, first aid procedures in the event of accidents, symptoms of various pesticide poisonings, and proper storage, transportation, handling, and disposal methods;~~

~~(c) Knowledge of potential consequences to the environment from the use or misuse of pesticides, as influenced by climate, topography, vegetative buffers or other pesticide~~

practices directly relating to protection of water, and existence of plant and/or animal life;

(d) ~~Methods to minimize pesticide drift and off-target deposition of pesticides, including nozzle selection, calibration, product formulation, product volatility, buffers and barriers, adjuvants, precision application technology, and environmental conditions (wind, inversion, temperature, etc.);~~

(e) ~~Knowledge of methods of use or application, including the various formulations (dust, wettable powder, etc.) of pesticides, the compatibility of various pesticides, the types of application equipment or devices, and the times when various pesticide formulations or equipment would be appropriately used; and~~

(f) ~~Knowledge and comprehension of existing laws and rules governing pesticide use or application, including classifications of various pesticides (highly toxic, restricted use, or general).~~

**In addition to, and not in lieu of, any other competencies contained in this Chapter, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:**

**(A) 40 CFR 171.103(c) Core standards for all categories of certified commercial applicators, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1031-1032; and**

**(b) Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.**

(2) The applicant shall be notified within 30 days of taking a written examination, as to the grade received in such examination and whether such grade is passing or failing. Such notification shall be deemed an "order" for the purposes of judicial review provided in ORS 183.480.

(3) An applicant for a pesticide applicator's license renewal shall be required to take a reexamination each fifth year after taking the original examination, and be subject to the provisions of this section and OAR 603-057-0125 in regard thereto. However, if the Department's records indicate the applicant for license renewal has complied with the provisions of 603-057-0150, the written examination shall be waived, ~~except in the category "Regulatory Pest Control," subcategory "Livestock Protection Collar."~~

(4) ~~If an applicant for a pesticide applicator's license has passed a current written examination accredited by another state with which the Department has a reciprocal agreement on certification or licensing, and submits evidence of the same to the~~

~~Department at the time of submitting an initial license application with applicable fee, the license examination may be waived. In the event an applicant for a pesticide applicator's license fails the written examination or re-examination, the applicant shall be qualified to take the examination again.~~

**(5) This section (5) applies to a person seeking an Oregon pesticide applicator's license based on the person's possession of an equivalent out-of-state license or certification.**

**(a) The Department may issue a pesticide applicator's license based on a person's possession of an equivalent out-of-state license or certification only if all of the following conditions are satisfied:**

**(i) The license or certification was issued by a state, tribe, or federal agency pursuant to an EPA-approved certification plan;**

**(ii) The entire duration of the Oregon pesticide applicator's license that is being requested is no more than five years after the date on which the out-of-state license or certification was issued;**

**(iii) The out-of-state license or certification was obtained by successfully completing an equivalent examination in that state or jurisdiction (i.e., Oregon reciprocity cannot be based on certification in a different state that is itself based upon reciprocity);**

**(iv) Enforcement history information furnished by the state, tribe or federal agency does not reveal any violations that would have resulted in license suspension or revocation, if they had occurred in Oregon; and**

**(v) The person requesting reciprocity submits the appropriate license application, license fee, and any additional documents required by the Department.**

**(b) For purposes of this section (5) of this rule, an out-of-state examination will be considered equivalent to an Oregon examination only if all of the following conditions are satisfied:**

**(i) The Oregon and out-of-state examinations cover the same range of material at the same depth;**

**(ii) The Oregon and out-of-state examinations contain approximately the same number of questions;**

**(iii) The Oregon and out-of-state examinations are based upon the same or similar study materials;**

**(iv) The out-of-state examination was offered in an appropriately proctored location; and**

**(v) The out-of-state examination was offered only in a closed-book format, with no additional materials except formulae sheets furnished by the proctor.**

**(c) If a person successfully applies for an Oregon pesticide applicator's license based upon their possession of an equivalent out-of-state license or certification, they will be issued the appropriate license, with any appropriate categories or subcategories, and will be subject to the same requirements as those who obtained a pesticide applicator's license by passing Oregon examinations.**

~~(5) In the event an applicant for a pesticide applicator's license fails the written examination or re-examination, the applicant shall be qualified to take the examination again.~~

#### 603-057-0125

#### Special Standards of Pesticide Applicator Competence

In addition to the requirements of OAR 603-057-0120, the written examination shall include the following applicable special standards for the category or subcategory indicated:

**(1) "Agricultural Pest Control — Insecticide and Fungicide":**

**(a) In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:**

**(A) 40 CFR 171.103(d)(1)(i) Crop pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and**

**(B) 40 CFR 171.105(a)(11) Agricultural pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1036; and**

**(b) Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.**

**(2) “Agricultural Pest Control — Herbicide”:**

**(a)** In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:

**(A)** 40 CFR 171.103(d)(1)(i) Crop pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

**(B)** 40 CFR 171.105(a)(11) Agricultural pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1036; and

**(b)** Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.

**(4) “Agricultural Pest Control — Livestock Pest Control”:**

**(a)** In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:

**(A)** 40 CFR 171.103(d)(1)(ii) Livestock pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

**(b)** Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.

**(5) “Aquatic Pest Control”:**

**(a)** In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:

**(A)** 40 CFR 171.103(d)(5) Aquatic pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

**(b)** Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.

**(6) “Demonstration and Research”:**



(a) In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:

(A) 40 CFR 171.103(d)(10) Demonstration and research, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032-1033; and

(b) Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.

(7) “Forest Pest Control”:

(a) In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:

(A) 40 CFR 171.103(d)(2) Forest pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

(B) 40 CFR 171.105(a)(11) Agricultural pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1036; and

(b) Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.

(8) “Industrial, Institutional, and Structural Pest Control — Pest Control, General”:

(a) In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:

(A) 40 CFR 171.103(d)(7) Industrial, institutional, and structural pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

(b) Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.

(9) “Industrial, Institutional, and Structural Pest Control — Structural Pest Control”:

(a) In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:

(A) 40 CFR 171.103(d)(7) Industrial, institutional, and structural pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

(b) Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.

(10) “Industrial, Institutional, and Structural Pest Control — Moss Control”:

(a) In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:

(A) 40 CFR 171.103(d)(7) Industrial, institutional, and structural pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

(b) Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.

(11) “Industrial, Institutional, and Structural Pest Control — Wood Treatment”:

(a) Knowledge of wood-destroying pests, including habitat and signs of their presence;

(b) Knowledge of the properties of the non-fumigant pesticides used to control wood-destroying organisms;

(c) Knowledge of application methods, disposal methods, and best practices that will minimize or prevent hazards to humans.

(c) Knowledge of best practices to minimize non-target exposures.

(12) “Marine Fouling Organism Control”:

(a) Knowledge of related state and federal regulations;

(b) Knowledge of antifouling paints and their properties;

(c) Knowledge of best practices to minimize contamination of areas surrounding the treated area and non-target exposures.

**(13) “Ornamental and Turf Pest Control — Insecticide and Fungicide”:**

(a) In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:

(A) 40 CFR 171.103(d)(3) Ornamental and turf pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

(b) Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.

**(14) “Ornamental and Turf Pest Control — Herbicide”:**

(a) In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:

(A) 40 CFR 171.103(d)(3) Ornamental and turf pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

(b) Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.

**(15) “Public Health Pest Control”:**

(a) In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:

(A) 40 CFR 171.103(d)(8) Public health pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

(b) Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.

**(16) “Regulatory Weed Control”:**

(a) In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:

(A) 40 CFR 171.103(d)(9) Regulatory pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

(b) Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.

(17) “Right-of-Way Pest Control”:

(a) In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:

(A) 40 CFR 171.103(d)(6) Right-of-way pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

(b) Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.

(18) “Seed Treatment”:

(a) In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:

(A) 40 CFR 171.103(d)(4) Seed treatment, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

(b) Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.

(19) “Non-Soil Fumigation”:

(a) In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:

(A) 40 CFR 171.103(d)(14) Non-soil fumigation, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1034-1035; and

(b) Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.

**(20) “Soil Fumigation”:**

(a) In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:

(A) 40 CFR 171.103(d)(13) Soil fumigation, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1033-1034; and

(b) Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.

**(21) “Vertebrate Pest Control”:**

(a) In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:

(A) 40 CFR 171.103(d)(1)(i) Crop pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

(B) 40 CFR 171.103(d)(2) Forest pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

(C) 40 CFR 171.103(d)(3) Ornamental and turf pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

(D) 40 CFR 171.103(d)(6) Right-of-way pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

(E) 40 CFR 171.103(d)(7) Industrial, institutional, and structural pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

(b) Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.

**(21) “Commercial Mosquito Vector Control”:**

**(a)** In addition to, and not in lieu of, any other competencies contained in this division 57, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:

**(A)** 40 CFR 171.103(d)(8) Public health pest control, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1032; and

**(b)** Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.

~~(a) Knowledge of the characteristics and habits of predatory animals, and particularly coyotes;~~

~~(b) Knowledge of the toxicity levels of sodium cyanide, the hazards in the use or application thereof, and the common exposure routes thereof;~~

~~(c) Knowledge of the common types of accidents associated with the use or application of sodium cyanide in the quantities and forms utilized;~~

~~(d) Knowledge of precautions to be undertaken to protect the applicator and the immediate environment and nontarget organisms in the vicinity;~~

~~(e) Knowledge of the effects of weather, terrain, soil, drainage, and other topographical or climatic conditions that are associated with the use or application of sodium cyanide in the prescribed manner for predator control;~~

~~(f) Knowledge of the operation, repair, and maintenance procedures for the device known as the “M-44 spring loaded sodium cyanide coyote control device,” including placement and retrieval thereof;~~

~~(g) Knowledge of the departmental rules relating to the use of sodium cyanide and the above described device, including the placement of adequate warning signs, the keeping of records relating to pesticide device locations and numbers, and the inventorying of numbers and species of animals eradicated.~~

**(2) “Regulatory Pest Control-Livestock Protection Collar”:**

~~(a) Ability to read and understand pesticide labels and labeling information, including all labeling and use restrictions for sodium fluoroacetate (Compound 1080) livestock protection collars;~~

- ~~(b) Ability to recognize the technical name, sodium fluoroacetate, and understand the basic properties of Compound 1080;~~
- ~~(c) Ability to recognize potential hazards posed to humans, domestic animals, and non-target wildlife by the use of the livestock protection collar;~~
- ~~(d) Ability to recognize general symptoms of poisoning by Compound 1080 in humans and domestic animals and take appropriate action;~~
- ~~(e) Knowledge that only an employee of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control, certified and licensed as a public pesticide applicator in the category "Regulatory Pest Control," subcategory "Livestock Protection Collar," by the Oregon Department of Agriculture can handle or use Compound 1080 and the livestock protection collar;~~
- ~~(f) Ability to recognize situations where use of the livestock protection collar can be expected to be safe and effective, as well as those situations where alternative methods of control would be more suitable. These methods may include but would not be limited to use of the M-44 device, guard animals, fences, repellents, fright devices, snares, and traps;~~
- ~~(g) Knowledge of the use restrictions set forth in OAR 603-057-0360 and the record-keeping requirements set forth in 603-057-0375, which include a record of each animal (target or non-target) found poisoned or suspected of having been poisoned as a result of the use of Compound 1080;~~
- ~~(h) Knowledge of the requirement for immediate (within three days) reporting of suspected poisonings of non-target species and suspected poisonings of humans or domestic animals by Compound 1080 to the U.S. Environmental Protection Agency and the Department, as set forth in OAR 603-057-0375(3);~~
- ~~(i) Ability to distinguish between damaged livestock protection collars that can be repaired and those that must be disposed of properly;~~
- ~~(j) Knowledge of how to make appropriate repairs to damaged livestock protection collars prior to reuse and how to dispose of them properly if they cannot be repaired;~~
- ~~(k) Knowledge of how to properly dispose of dead animal remains, vegetation, or soil contaminated by a punctured livestock protection collar;~~
- ~~(l) Knowledge of safe handling and storage procedures for the livestock protection collar;~~
- ~~(m) Knowledge of the requirement to post and maintain bilingual (English/Spanish) warning signs at logical points of access to areas where livestock protection collars are in use; and~~

~~(n) Knowledge of the requirement to perform inspections of livestock protection collars in use twice weekly.~~

Statutory/Other Authority: ORS 561 & 634

Statutes/Other Implemented: ORS 634.306(5)

History:

AD 6-1997, f. & cert. ef. 6-11-97

AD 7-1977, f. & ef. 4-5-77

AD 1066(12-75), f. 8-11-75, ef. 10-15-75

#### 603-057-0127

#### Pesticide Apprentice Standards of Competence

(1) The department may issue a pesticide apprentice license for one licensing period, or portion thereof. The department may issue the license to an applicant that is at least 18 years of age upon receipt of:

(a) A license application form that contains all of the information requested by the department;

(b) Payment of the appropriate fee; and.

(c) Documentation that the applicant successfully completed, within two years of the date of initial application, a written examination developed and administered by the department for the purpose of assuring that the applicant is competent in the use of pesticides as a pesticide apprentice. The content of this examination shall include the topics listed in OAR 603-057-0129(1)(a) through (e). Successful completion of the examination shall require answering at least 70 percent of the examination questions correctly.

(d) A pesticide apprentice license shall expire on December 31 of the year of issuance, or the following year if issued a license for two consecutive years.

(2) The department may renew a pesticide apprentice license for consecutive licensing periods upon receipt of:

(a) A license renewal application form containing all of the information requested by the department;

(b) Payment of the appropriate fee; and



(c) Documentation that the applicant successfully completed the required credit hours of pesticide instructional sessions during the previous licensing period. The department must accredit the instructional sessions. Eight (8) credit hours are required for each year of a licensing period. Four (4) of the eight (8) credit hours must be core credits as described in OAR 603-057-0135. All training requirements may be waived for the first year of the initial licensing period only.

(3) If a person licensed as a pesticide apprentice does not deliver the form, fee, and documentation described in subsection (2) of this rule to consecutively renew their license, the person will not be eligible to renew their pesticide apprentice license. The person must retake the qualifying examination as described in (1)(c) of this section.

(4) A pesticide apprentice license authorizes the holder to conduct pesticide application activities under the supervision of an appropriately licensed supervisor. The licensed apprentice may ~~use~~ apply pesticides only in the categories listed on the supervisor's license. If the supervisor is a licensed public applicator, the licensed apprentice may only ~~use~~ apply pesticides as described in ORS 634.116(12).

(5) For each pesticide application made by a pesticide apprentice, a pesticide application record, as required by ORS 634.146 and OAR 603-057-0130, must be made that also contains the names and pesticide license numbers of the appropriately licensed pesticide apprentice(s) and the supervisor(s). The employer of the licensed pesticide apprentice shall retain the record for a period of three years and release them to the department for inspection as required or authorized by ORS chapters 561 or 634 or rules adopted thereunder.

(6) A pesticide apprentice license does not authorize the holder to conduct pesticide applications by ~~helicopter or fixed-wing~~ aircraft.

(7) For purposes of this section "an appropriately licensed supervisor" is:

(a) A licensed pesticide applicator, or licensed public applicator;

(b) Licensed in the category, or categories, in which the pesticide apprentice is currently engaged.

(8) Any pesticide apprentice conducting pesticide application activities without a valid appropriately licensed supervisor, or who is unable to identify their supervisor, will be considered unlicensed and subject to enforcement actions in accordance to ORS 634.900

Statutory/Other Authority: ORS 561.190 & 634

Statutes/Other Implemented: ORS 634.306

History:

DOA 16-2012, f. & cert. ef. 6-1-12

603-057-0130

**Applicatoionr's Records and Reports**

**(1) A pesticide operator shall prepare and maintain records of all pesticide applications for at least three years from the date of application. These records must be legible and available during business hours for review and inspection by the department. At minimum, such records must include the following:**

**(a) The full name and address of the business, firm, or individual who owns or controls the agricultural plants, property or site treated;**

**(b) The address of the application site, or a specific geographic description of the application site (such as circle or field number or name);**

**(c) The size of the area treated (such as in acres, square feet, linear feet, etc.);**

**(d) The month, day, and year of the application, and the beginning and ending time of the application;**

**(e) The full name of the individual or business that supplied the product; and**

**(f) The EPA registration number of the product applied;**

**(g) The name of the product applied and name of the product manufacturer;**

**(h) Amount of product applied per acre or unit area applied (quarts per acre, ounces per linear foot, etc.);**

**(i) The carrier or diluent, dilution rate, and total amount of solution applied per acre or unit area (gallons per acre, fluid ounces per square foot, ounces per linear feet, etc.);**

**(j) The specific crop, commodity, stored product, or site to which the product was applied, as applicable;**

**(k) Identification of the type of application equipment used ("backpack #1", etc.), and if applied aurally, the aircraft registration number assigned by the United States Federal Aviation Administration.**

**(l) The full name, and license number issued by the department, of the**

**pesticide applicator or public applicator who made or supervised the application, or the appropriately licensed pesticide consultant who made the application.**

**(m) If a pesticide application is conducted by a Pesticide Apprentice or an Immediately Supervised Pesticide Trainee, then the names, and pesticide license numbers issued by the department, of both the Pesticide Apprentice or Immediately Supervised Pesticide Trainee and their supervising applicator must be included legibly on the record.**

~~(24) Pursuant to subsection (13) of ORS 634.116, a public applicator shall prepare and maintain the records, and submit the reports, required by subsection (1) of this section of pesticide operators by 634.146.~~

~~(2) A pesticide applicator shall prepare and maintain the records, and submit the reports, required of pesticide operators by ORS 634.146 if the employer of such applicator is not a pesticide operator (greenskeepers, etc.).~~

~~(3) A pesticide applicator and public applicator shall include their full name and pesticide applicator license number legibly on the records required by ORS 634.116 and 634.146.~~

~~(4) If a pesticide application is conducted by a Pesticide Apprentice or an Immediately Supervised Pesticide Trainee, then the names and pesticide license numbers of both the Pesticide Apprentice or Immediately Supervised Pesticide Trainee and their supervising applicator must be included legibly on the record.~~

Statutory/Other Authority: ORS 561 & 634

Statutes/Other Implemented: ORS 634.146

History:

DOA 26-2012, f. & cert. ef. 10 30-12

AD 7-1977, f. & ef. 4-5-77

603-057-0135

Private Applicator Standards of Competence

(1) As provided in ORS 634.142, competence of a private applicator in the use or handling of pesticides shall be determined on the basis of a written examination and evidenced by the issuance of a certificate. The written exam shall include the following general standards:

**(a) In addition to, and not in lieu of, any other competencies contained in this Chapter, the Department adopts by reference the following federal regulation printed as part of the Code of Federal Regulations, 40 CFR 171, in the Federal Register:**

**(A) 40 CFR 171.105(a) General private applicator certification, published 1/04/17, Federal Register, vol. 82, no. 2, pp. 1035-1036; and**

**(b) Any additional standards necessary to protect humans or the environment or to ensure compliance with state or federal laws or regulations as determined by the Department.**

**(2) A private applicator shall not use or supervise the use of fumigants without the appropriate license categories. A private applicator licensed pursuant to this section may add the Non-Soil Fumigation or Soil Fumigation categories, as defined in subsections (13) and (14) of OAR 603-057-0110, following successful completion of the appropriate written category examinations. These examinations must be based on the standards of competency for the appropriate category as described in OAR 603-057-0125. Fumigants may only be used in the production of agricultural crops, to protect agricultural commodities, or on agricultural land, grasslands, or non-crop agricultural lands.**

**(3) A private applicator certificate shall be valid for a period of up to five calendar years from its issuance and expire on December 31 of the fifth year.**

**(43) An applicant for a private applicator's initial certificate or for a private applicator's renewal shall be at least 18 years of age and shall be required to successfully complete the written examinations then in use for certification of private applicators. Successful completion of the written examinations shall consist of correctly responding to at least 70 percent of the questions contained in the examinations.**

**(54) In lieu of the written re-examination requirement of section (43) of this rule, an applicant for renewal of a private applicator certificate may attend pesticide training sessions approved by the Department, totaling 16 hours of Department approved pesticide use related instruction, during the period preceding the expiration of his/her certificate as follows:**

**(a) An individual shall be required to attend the core pesticide training session and accumulate twelve additional units of Department approved pesticide training;**

**(b) Not more than eight units of Department approved pesticide training may be accumulated for recertification during a single 12-month period (January–December);**

**(c) Credit for attending core pesticide training can only be obtained twice during the five year certification period. The second core pesticide training session attended will be credited toward the twelve additional units of Department approved pesticide training required for recertification; and**

**(d) When any of the competency standards listed in OAR 603-057-0135 or OAR 603-057-0125 change, the Department may require attendance at one or more specific pesticide-instructional sessions that are accredited by the Department.**

**These instructional sessions must cover all new and revised competency standards. Pesticide applicators and consultants that fail to complete each applicable training must pass the appropriate written examinations as required by section (2) and (4) of this rule.**

(65) The core pesticide training required by section (54) of this rule shall consist of a total of at least 4 units of instruction (50–60 minutes of instruction per unit) on any one or more of the following topics:

- (a) Principles of Integrated Pest Management as defined in ORS 634.650;
- (b) Label Comprehension;
- (c) Calibration (math and equipment);
- (d) Methods to minimize pesticide drift and off-target deposition of pesticides, including nozzle selection, product formulation, product volatility, buffers and barriers, adjuvants, precision application technology, and environmental conditions (wind, inversion, temperature, etc.);
- (e) Pest resistance prevention;
- (f) Laws (environmental, endangered species, ground and surface water protection, worker protection standards (WPS), pesticide and pesticide container disposal); and
- (g) Personal Safety (including personal protective equipment (PPE)).

(76) The submission of pesticide training sessions to the Department for approval, assignment of approved units of instruction and conditions relating thereto shall be done in accord with OAR 603-057-0150(2).

(87) The Department shall make available to each holder of a private applicator certificate of the expiration date of his/her certificate, of his/her attendance of core training, and of the number of units of additional Department approved pesticide training accumulated toward renewal of the certificate.

(98) The requirement for re-examination as specified in section (43) of this rule and the alternate procedure of attending Department approved pesticide training as specified in section (54) of this rule shall be waived, **except for the Soil Fumigation and Non-Soil Fumigation categories**, if the applicant for a private applicators certificate renewal is a pesticide-applicator-or-consultant. Said waiver shall be in effect only for the period the applicant is a pesticide applicator-or-consultant. Such waiver shall not affect the requirement for re-examination or the alternate procedure of OAR 603-057-0150 for pesticide applicators-or-consultants specified elsewhere in these administrative rules.

(109) The fee for a private applicator certificate shall be \$25.

Statutory/Other Authority: ORS 561.190 & 634

Statutes/Other Implemented: ORS 634.124

History:

DOA 21-2012, f. & cert. ef. 7-10-12

AD 8-1996, f. 7-12-96, cert. ef. 8-9-96

AD 8-1993, f. 6-8-93, cert. ef. 8-1-93

AD 8-1988, f. 8-30-88, cert. ef. 10-1-88

AD 7-1977, f. & ef. 4-5-77

603-057-0140

### Pesticide Dealer Records

(1) As provided in subsections (6) and (7) of ORS 634.322, a pesticide dealer shall prepare and maintain records of **each his sales or distribution of a restricted-use and or highly toxic pesticides for a period of three years from the date of the transaction.** Such records shall include:

(a) The names and addresses of **the residence or principal place of business of the purchasers of such pesticides;**

~~(b) , and~~ **(b) The applicable license or certificate numbers, license expiration date, license categories, and state, tribal, or federal agency that issued the license of the purchasers;**

~~(b)~~ **(c) The date of the transactionsale;**

~~(c)~~ **(d) The trade name, (and the registration number assigned by the United States Environmental Protection Agencyformulation if applicable), and any applicable emergency exemption file symbol code or state special local need registration number of such pesticides; and**

~~(d)~~ **(e) The quantity of each distribution or sale of such pesticides.**

(2) In addition to the requirements of a pesticide dealer otherwise specified in (1) of this section, a pesticide dealer shall prepare and maintain records of sales of products containing the active ingredient carbofuran as follows:

(a) The name and address of the person who received the product when the product was not delivered directly to the purchaser;

(b) The crop(s) to which the product will be applied;

(c) The acreage of each crop to which the product will be applied;

- (d) The amount of product that will be applied to each acre of each crop;
  - (e) The intended date of application to each crop.
- (3) The information required by (2) above shall be obtained by the pesticide dealer from the person receiving the product at the time of distribution or sale.
- (4) All information prepared for every distribution or sale of a pesticide product containing the active ingredient carbofuran shall be submitted by the pesticide dealer to the Oregon Department of Agriculture within five business days of the distribution or sale.
- (5) Failure to comply with the conditions set forth in OAR 603-057-0140 may be considered as violations of ORS 634.372, and may be subject to any enforcement action available to the department under ORS 634.

#### 603-057-0145

##### Pesticide Consultant Standards of Competence

- (1) As provided in ORS 634.132, competence of a pesticide consultant to advise or make recommendations concerning the use, handling, or selection of restricted-use pesticides shall be determined on the basis of a written examination. As a supplement to the subject matters set forth in subsection (2) of ORS 634.132, the examination shall also include the subject matters set forth in OAR 603-057-0120(1) relating to the General Standards of Pesticide Applicator Competence **and OAR 603-057-0135(1) relating to the Private Applicator Standards of Competence.**
- ~~(2) A pesticide consultant licensed pursuant to this section may not advise or make recommendations in subcategories (a) or (b) of 603-057-0115(4), Regulatory Pest Control, regarding the use, handling, or selection of the M-44 Device containing sodium cyanide or the livestock protection collar containing sodium fluoroacetate (Compound 1080).~~
- (3) A pesticide consultant licensed pursuant to this section **who is at least 18 years of age** may add the category Demonstration and Research, as defined in OAR 603-057-0110 (3), **and other categories or subcategories necessary for the use of pesticides for research, experiments, or demonstrations to theirhis/her license** following successful completion of the **appropriate** written **category** examinations. **A pesticide consultant may not add the following categories or subcategories: Aquatic Pest Control, Soil Fumigation, and Non-Soil Fumigationfor the Demonstration and Research category.**
- (4) A pesticide consultant licensed pursuant to this section in **anythe category or subcategory**~~Demonstration and Research~~ is eligible to be licensed as a pesticide

applicator in the **same** category of ~~Demonstration and Research~~ without further examination. An application for such applicator's license, or for the addition of ~~a~~the category to an existing license, and the appropriate fee payment must be made separately from the application for, or the addition to, a pesticide consultant's license.

~~(5) If an applicant for a pesticide consultant's license has passed a current written examination accredited by another state with which the Department has a reciprocal agreement on certification or licensing, and submits evidence of the same to the department at the time of submitting his license application with applicable fee, the license examination may be waived.~~

**(5) This section (5) applies to a person seeking an Oregon pesticide consultant's license based on the person's possession of an equivalent out-of-state license or certification.**

**(a) The Department will issue a pesticide consultant's license based on a person's possession of an equivalent out-of-state license or certification only if all of the following conditions are satisfied:**

**(i) The license or certification was issued by a state, tribe, or federal agency pursuant to an EPA-approved certification plan;**

**(ii) The entire duration of the Oregon pesticide consultant's license that is being requested is no more than five years after the date on which the out-of-state license or certification was issued;**

**(iii) The out-of-state license or certification was obtained by successfully completing an equivalent examination in that state or jurisdiction (i.e., Oregon reciprocity cannot be based on certification in a different state that is itself based upon reciprocity);**

**(iv) Enforcement history information furnished by the state, tribe or federal agency does not reveal any violations that would have resulted in license suspension or revocation, if they had occurred in Oregon; and**

**(v) The person requesting reciprocity submits the appropriate license application, license fee, and any additional documents required by the Department.**

**(b) For purposes of this section (5) of this rule, an out-of-state examination will be considered equivalent to an Oregon examination only if all of the following conditions are satisfied:**

**(i) The Oregon and out-of-state examinations cover the same range of material at the same depth;**



(ii) The Oregon and out-of-state examinations contain approximately the same number of questions;

(iii) The Oregon and out-of-state examinations are based upon the same or similar study materials;

(iv) The out-of-state examination was offered in an appropriately proctored location; and

(v) The out-of-state examination was offered only in a closed-book format, with no additional materials except formulae sheets furnished by the proctor.

**(c) If a person successfully applies for an Oregon pesticide consultant's license based upon their possession of an equivalent out-of-state license or certification, they will be issued the appropriate license, with any appropriate categories or subcategories, and will be subject to the same requirements as those who obtained a pesticide consultant's license by passing Oregon examinations.**

(6) An applicant for a pesticide consultant's license renewal shall be required to take and successfully complete a reexamination each fifth year after taking the original examination, and be subject to the provisions of this section in regard thereto. However, if the Department's records indicate the applicant for license renewal has complied with the provisions of OAR 603-057-0150, the written reexamination shall be waived.

(7) In the event an applicant for a pesticide consultant's license fails the written examination or reexamination, the applicant shall be qualified to take the examination again upon submitting a new application for the same.

(8) A pesticide consultant licensed pursuant to this section **and who is at least 18 years of age** shall also be eligible to be licensed as a private applicator for the purpose of purchasing, using or supervising the use of any restricted use or highly toxic pesticides for the purpose of producing agricultural commodities or forest crops on land owned or leased by the person. **The pesticide consultant license does not qualify an individual to add the Soil Fumigation or Non-Soil Fumigation categories to a private applicator license.** An application and fee payment for a private applicator's license must be made separately from the application and fee payment for the pesticide consultant license. The certification date of the Private Applicator license will be consistent with that of the consultant license.

Statutory/Other Authority: ORS 561 & 634

Statutes/Other Implemented: ORS 634.306(5)

History:

DOA 8-2009, f. & cert. ef. 7-15-09

AD 6-1997, f. & cert. ef. 6-11-97

AD 15-1978, f. & ef. 9-15-78

AD 7-1977, f. & ef. 4-5-77

603-057-0150

Alternative Requirements for Competence of Pesticide Applicator or Consultant License Renewal

In lieu of the written re-examination requirements of OAR 603-057-0120(3) or of 603-057-0145(4), an applicant for renewal of either a pesticide applicator's license or a pesticide consultant's license may accumulate at least 40 credits by attending pesticide-instructional sessions, accredited by the Department, during the five-year period preceding the year in which the written re-examination would be required, in accordance with the following:

(1) Not more than 15 credits may be accumulated for recertification purposes by an applicant during any one calendar year.

(2) In the event a pesticide instructional session is desired to be considered for accreditation by an applicant, such applicant shall submit to the Department, or person authorized by the Department, a written request for accreditation not less than 30 days prior to the scheduled session, which written request shall include the agenda and summary of each topic/presentation of the session, the session sponsor, the name and address of the session sponsor, and the time and place of such session. Upon receipt of such written request, the Department, in consultation with Oregon State University, shall evaluate the instructional value of the session and either deny accreditation or assign credits to the entire session or any portion thereof in a range from 1 to 15, assigning no more than one credit for each 50 to 60 minute period of instruction. No such instructional sessions shall be considered for accreditation that is less than two credit hours in length except for computer based trainings as approved by the Department. In the event an instructional session is accredited, the Department shall provide the session instructor or sponsor with attendance certificates to be completed by such instructor or sponsor and returned by the applicants to the Department within 15 days after the session is completed. Under exceptional circumstances, as described in writing by an applicant, a written request for accreditation submitted later than 30 days prior to the scheduled session may be assigned credits in accordance with the provisions of this rule. Falsification of any part of such attendance certificate shall be considered grounds for license revocation proceedings by the Department.

**(3) When any of the competency standards listed in OAR 603-057-0120, OAR 603-057-0145, or OAR 603-057-0125 change, the Department may require attendance at one or more specific pesticide-instructional sessions that are accredited by the Department. These instructional sessions must cover all new and revised competency standards. Pesticide applicators and consultants that fail to complete each applicable training must pass the appropriate written examinations as required by OAR 603-057-0120(3) or of 603-057-0145(4). This section shall not apply to persons licensed to use the livestock protection collar in Oregon, in accordance with OAR 603-057-0120(3).**

Statutory/Other Authority: ORS 561 & 634  
Statutes/Other Implemented: ORS 634.306(5)  
History:  
DOA 21-2012, f. & cert. ef. 7-10-12  
AD 6-1997, f. & cert. ef. 6-11-97  
AD 8-1996, f. 7-12-96, cert. ef. 8-9-96  
AD 10-1987, f. & ef. 7-1-87  
AD 15-1978, f. & ef. 9-15-78

603-057-0160

Pesticide Use for Experimental or Research Purposes

(1) Use of any substance or combination of substances as a pesticide with the intent of gathering data needed to satisfy pesticide registration requirements of the United States Environmental Protection Agency (EPA) or of the department shall be considered pesticide use for experimental or research purposes.

(a) An experimental use permit that is issued by the department constitutes the approval required by ORS 634.022(2).

(b) The permit requirement in this section is in addition to pesticide licensing requirements.

(2) The requirement to obtain an experimental use permit is not applicable to:

(a) Experiments or research conducted by federal or state agencies; or

(b) Experiments or research conducted entirely in one or more greenhouses; or

(c) Experiments or research that only:

(A) Use pesticides that are registered by EPA and the department; and

(B) Use pesticides in the manner consistent with the product label.

(3) To obtain an experimental use permit, a person must submit a complete application to the department and be in compliance with subsection (14) of this section. The pesticide use described in the application may not begin until the department issues the experimental use permit.

(a) The applicant must use a form approved by the department; and

(b) The application must be submitted to the department at least 30 days prior to intended use.

- (4) There are two types of experimental use permits: site-specific and collective.
- (5) A site-specific experimental use permit authorizes pesticide use for experimental or research purposes that are at sites specified in the permit and are not covered by a collective experimental use permit.
- (a) Approvable sites include, but are not limited to, aquatic, residential, recreational and structural sites, areas with public access, commodity storage facilities, and areas exceeding a total of one acre.
- (b) Each application for a site-specific experimental use permit will include the following:
- (A) The name, address, and telephone numbers of the applicant and of the person responsible for carrying out the provisions of the experimental use permit;
- (B) Identification of each pesticide to be used, including;
- (i) The name of the pesticide active ingredient;
- (ii) The name of the pesticide product, if any; and
- (iii) The EPA registration number of the pesticide product, if any.
- (C) The name, address, and telephone numbers of the person responsible for carrying out the provisions of the experimental use permit at each specific site, and the number of the pesticide-related license issued to the person by the department, and the means of locating the person in case of an emergency;
- (D) The purpose of the experiment or research, including a list of the intended target pest(s), if any;
- (E) The approximate date(s) of pesticide use;
- (F) The intended crop or site of pesticide use;
- (G) Specific description and location of each site where pesticide use may occur, including the size (for example, acres, or square feet) of each site;
- (H) Disposition of any food or feed item from the crop or site on which the pesticide will be used;
- (I) Application rate(s) of the pesticide, and number of applications;
- (J) Method of application;
- (K) Timing and duration of the proposed experiment or research;

- (L) Total amount of pesticide to be used, diluent, and dilution rate;
  - (M) Copy of any experimental use permit issued by EPA, if applicable;
  - (N) A copy of the labeling that will accompany the pesticide in the field; and
  - (O) Any other information pertinent to the experiment or research specifically requested by the department.
- (6) A site-specific experimental use permit may be issued for up to twelve months from the date of approval by the department.
- (7) A collective experimental use permit authorizes pesticide use for experiments or research without identifying any specific site. Approvable sites include agricultural and forestry sites.
- (a) The applicant may use one or more sites in any location in Oregon provided that the total size of all of the sites used for a particular pesticide does not exceed one acre.
  - (b) Each application for a collective experimental use permit will include the following:
    - (A) The name, address, and telephone numbers of the applicant and of the person responsible for carrying out the provisions of the experimental use permit, the number of the pesticide-related license issued to the person by the department, and the means of locating the person in case of an emergency;
    - (B) A signed statement that all pesticide use will comply with all of the provisions of the collective experimental use permit and of this section; and
    - (C) Any other information pertinent to the application specifically requested by the department.
- (8) A collective experimental use permit will be issued for as long as one calendar year, ending December 31st.
- (9) Any person conducting pesticide use for experimental or research purposes must be appropriately licensed by the department and include the category Demonstration and Research, as specified in OAR 603-057-0110(3), on that license. This licensing requirement applies to all persons making pesticide applications for experimental or research purposes and is not limited to persons conducting pesticide research authorized by an experimental use permit.
- (10) Any crop or site on which a pesticide is used for experimental or research purposes shall be under the control of the person authorized to conduct that pesticide use. Said control may include:

(a) Ownership, rental or lease of the land on which the crop or site is located by the person;

(b) Ownership, rental or lease of the land on which the crop or site is located by the immediate employer of the person;

(c) Documented permission for the pesticide use from the owner, renter or leaseholder of the land on which the crop or site is located;

(d) Documented permission for the pesticide use from the public entity in possession or control of the land on which the crop or site is located.

(11) Any person using pesticides for experimental or research purposes shall prepare, maintain, and provide records in the same manner as in ORS 634.146 and **ORS 603-057-0130**.

(12) As provided by ORS 634.322(6), the department may deny an application for an experimental use permit or, amend, suspend or revoke any experimental use permit issued by the department.

(13) The department may establish conditions in an experimental use permit approval that the department determines necessary to be consistent with ORS Chapter 634 and this section.

(14) The holder of an experimental use permit shall provide the department a summary report of the experiments and research conducted under the permit no later than 30 days after the expiration date of the permit.

(a) Each summary report must include, at a minimum, the identification number of the experimental use permit, the records required by subsection (11) of this section, any adverse environmental, human, or animal health effects resulting from the pesticides used, and, if any pesticide use occurred on a food or feed item, documentation of food or feed item destruction, crop/site isolation, or other measures taken to prevent the food or feed item from being used or consumed.

(b) If the required summary report is not provided to the department, the department will not issue any future experimental use permit to the applicant.

(15) If information is provided in an experimental use permit application, summary report, or other form that is identified by the applicant as confidential, the department will hold the information confidential to the extent allowed under ORS Chapter 192.

(16) Any food or feed item to which a pesticide used for experimental or research purposes has been applied must be rendered unusable for food or feed unless a tolerance greater than the residues resulting from the use has been established or, if allowed by law, conditions implemented to prevent any use of the treated crop/site for

food or feed for a period no less than 365 days. Such food or feed item may include, but is not limited to crop, forage (including grazing rangeland or pasture), green chop, hay, seed screenings, silage, and straw. The department requires documentation of food or feed item destruction or crop/site isolation as a condition of the experimental use permit.

(17) The department may monitor any pesticide used for experimental or research purposes. Monitoring may include, but is not limited to:

- (a) Observing, inspecting, and documenting mixing, loading, transportation, and application activities;
- (b) Inspecting and documenting application equipment;
- (c) Collecting and analyzing samples;
- (d) Interviewing any person that may have knowledge regarding the pesticide use; and
- (e) Reviewing any records.

(18) The permit holder or the person that conducted the pesticide use must immediately report to the department any adverse environmental, human, or animal health effects resulting from pesticides used for experimental or research purposes.

(19) In addition to any other liability or penalty provided by law, any failure by any person to comply with the provisions of this section, as determined by the department, may be used as a basis for one or more of the following actions, if applicable:

- (a) To revoke, suspend or refuse to issue an experimental use permit, in accordance with ORS 634.022 or 634.322(6);
- (b) To revoke, suspend or refuse to issue any license of a permit holder or of a person that conducted a pesticide use for experimental or research purposes, in accordance with ORS 634.322(4);
- (c) To impose a civil penalty, in accordance with ORS 634.900.

Statutory/Other Authority: ORS 634  
Statutes/Other Implemented: ORS 634  
History:  
DOA 15-2009, f. & cert. ef. 12-7-09  
DOA 8-2009, f. & cert. ef. 7-15-09

603-057-0180  
Pesticide License Equivalency Provision

A pesticide applicator or public pesticide applicator licensed pursuant to ORS 634.122 in the subcategory Agriculture-Herbicide, or in the subcategory Agriculture-Insecticide/Fungicide, or in the category Forest Pest Control, shall be eligible to be licensed as a Private applicator to purchase, use, and/or supervise the use of any pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of producing agricultural commodities or forest crops on land owned or leased by the licensee or licensee's immediate employer. **The Soil Fumigation and Non-Soil Fumigation categories may only be added to a private applicator license if the pesticide applicator or public pesticide applicator is licensed in the Soil Fumigation or Non-Soil Fumigation category, respectively.** An application and fee payment for such Private applicator license must be made separately from the application and fee payment for the pesticide applicator or public pesticide applicator license. The certification date of the Private Applicator license will be consistent with that of the pesticide applicator or public pesticide applicator license.

Statutory/Other Authority: ORS 634

Statutes/Other Implemented: ORS 634

History:

DOA 19-2018, minor correction filed 05/23/2018, effective 05/23/2018

DOA 9-2009, f. & cert. ef. 7-15-09

#### 603-057-0200

##### Limitations on Restricted Use Pesticides

As provided in ORS 634.322 and in addition to other provisions of ORS Chapter 634, the following limitations and procedures shall apply to the distribution and use of restricted use pesticides identified in OAR 603-057-0205:

(1) A restricted use pesticide shall ~~may~~ only be:

(a) Distributed for use by and used by an appropriately licensed pesticide applicator, public applicator, **pesticide consultant** or private applicator; **and**

(b) Distributed or sold to users by an appropriately licensed pesticide dealer.

(2) A private applicator, or his/her designated agent, a pesticide operator or its designated agent, a pesticide applicator or a public applicator shall display his/her appropriate certificate or license to the pesticide dealer at the time of purchase of a restricted use pesticide, so that the number thereof may be recorded by the pesticide dealer pursuant to OAR 603-057-0140.

Statutory/Other Authority: ORS 561.190 & 634

Statutes/Other Implemented: ORS 634.306 & 634.322

History:

AD 13-1992, f. & cert. ef. 10-13-92



AD 10-1987, f. & ef. 7-1-87  
AD 7-1977, f. & ef. 4-5-77  
AD 1036(26-74), f. 8-20-74, ef. 9-11-74

603-057-0205

Listing of Restricted Use Pesticides

As provided in ORS 634.316, restricted use pesticides shall be:

- (1) Any pesticide active ingredient, formulation, product or usage classified restricted use by the United States Environmental Protection Agency, through administration of the Federal Insecticide, Fungicide and Rodenticide Act, and identified in current Title 40, Chapter 1, Sub-Chapter E, Part 152 of the Code of Federal Regulations; or
- (2) Any pesticide product having labeling which specifies the product as being restricted use and has been accepted by the department for the purpose of registration as provided in ORS 634.016.

Statutory/Other Authority: ORS 561.190 & 634

Statutes/Other Implemented: ORS 634.306 & 634.316

History:

AD 13-1992, f. & cert. ef. 10-13-92  
AD 17-1990, f. & cert. ef. 10-2-90  
Reverted to AD 10-1987, f. & ef. 7-1-87  
AD 1-1990(Temp), f. & cert. ef. 3-1-90  
AD 10-1987, f. & ef. 7-1-87  
AD 12-1985, f. & ef. 11-27-85  
AD 24-1981, f. & ef. 12-1-81  
AD 7-1980, f. & ef. 9-25-80  
AD 8-1978, f. & ef. 6-23-78  
AD 28-1977, f. & ef. 12-5-77  
AD 7-1977, f. & ef. 4-5-77  
AD 1036(26-74), f. 8-20-74, ef. 9-11-74

603-057-0216

Pesticide Residue Tolerances in Foods

The rules governing residue tolerances of pesticides permitted on raw agricultural products and the exemptions from such tolerances, adopted by the United States Environmental Protection Agency and in effect as of the effective date of this rule, are hereby adopted by the Department as the rules governing residue tolerances of pesticides permitted on raw agricultural products and exemptions from such tolerances

in the State of Oregon. Said federal rules are set forth in Title 40 Code of Federal Regulations (CFR), Chapter 1, Part 180.

Statutory/Other Authority: ORS 561 & 634

Statutes/Other Implemented: ORS 634.306 & 634.042

History:

DOA 16-2007, f. & cert. ef. 10-25-07

DOA 9-2007(Temp), f. & cert. ef. 6-7-07 thru 12-1-07

AD 7-1977, f. & ef. 4-5-77

#### 603-057-0301

##### 2,4-D; High Volatile Esters

The high volatile esters of 2,4-D (2,4-Dichlorophenoxyacetic acid), including the methyl, ethyl, propyl, butyl, and amyl esters thereof, shall be subject to the restrictions and conditions on the use or application thereof as set forth in OAR 603-057-0305 to 603-057-0320.

Statutory/Other Authority: ORS 561.190, 634.306 & 634.322

Statutes/Other Implemented: ORS 634.306 & 634.322

History:

AD 1072(18-75), f. & ef. 12-5-75

#### 603-057-0305

##### Areas Affected

All lands situated north of Interstate Highway 80N within the Counties of Morrow and Umatilla, excluding therefrom land presently subject to the East Umatilla Chemical Control District Order, shall be subject to the restrictions and limitations set forth in OAR 603-057-0305 to 603-057-0320.

Statutory/Other Authority: ORS 561.190, 634.306 & 634.322

Statutes/Other Implemented: ORS 634.306 & 634.322

History:

AD 1072(18-75), f. & ef. 12-5-75

#### 603-057-0310

##### Time Period

The restrictions and conditions on the use or application of the high volatile esters of 2,4-D specified in OAR 603-057-0301 shall apply for the period of April 1 to September 1 of each year.

Statutory/Other Authority: ORS 561.190, 634.306 & 634.322

Statutes/Other Implemented: ORS 634.306 & 634.322

History:

AD 1072(18-75), f. & ef. 12-5-75

603-057-0315

Prohibited Acts

(1) No landowner shall use, apply, or cause to be applied, either by ground or aerial equipment, 2,4-D in the formulations described in OAR 603-057-0301 within the area prescribed in 603-057-0305 or within the time period prescribed by 603-057-0310, without first having applied for and received a permit from the Department as provided in 603-057-0320.

(2) No pesticide applicator, pesticide trainee, public applicator, public trainee, or pesticide operator shall use, apply, or cause to be applied, either by ground or aerial equipment, 2,4-D as prescribed in section (1) of this rule without first having received a copy of a valid permit from the landowner as provided in OAR 603-057-0320.

(3) No person shall violate the restrictions or conditions of a permit issued under OAR 603-057-0320.

Statutory/Other Authority: ORS 561.190, 634.306 & 634.322

Statutes/Other Implemented: ORS 634.306 & 634.322

History:

AD 1072(18-75), f. & ef. 12-5-75

603-057-0320

Permits and Applications

(1) Application for a permit to use or apply 2,4-D, otherwise prohibited by the provisions of OAR 603-057-0315, shall be made by a landowner to the Department on forms prescribed by the Department or, should there be insufficient time to utilize the United States mail, be made by a landowner by means of telegram or telephone to the Department. The application shall contain the following:

- (a) The name and address of the landowner-applicant;
- (b) The names of any authorized agents of the landowner;
- (c) The crops to which the pesticide is to be applied;
- (d) The amount of acreage to which the pesticide will be applied and the location of such acreage;
- (e) The purpose for which the pesticide is to be applied or used;

(f) The amount of the pesticide to be applied, the common or chemical name of the pesticide, and the rate of application per acre;

(g) The name and address of any person other than the landowner intended to apply the pesticide.

(2) Permits shall be on forms prescribed by the Department and, in addition to the information described in section (1) of this rule, shall include a permit number, dates of issuance and expiration, and any special restrictions and conditions on the use or application being permitted.

(3) The person to whom a permit is issued shall retain a copy of the same until 60 days after the expiration date of such permit, and shall deliver a copy of such permit to any other person applying or causing application of the pesticide who shall also retain his copy of the permit until 60 days after the expiration date of such permit.

(4) Permits shall only be issued upon the determination by the Department that the use or application of the pesticide is for the eradication or control of sagebrush or rabbit brush, and upon the further determination of the Department that the geography, time periods, and climatic conditions would reasonably allow the use or application of the pesticide without substantial adverse effects upon grapes.

Statutory/Other Authority: ORS 561.190, 634.306 & 634.322

Statutes/Other Implemented: ORS 634.306 & 634.322

History:

AD 1072(18-75), f. & ef. 12-5-75

#### 603-057-0325

~~Sodium Cyanide and M-44 Device~~

~~Sodium cyanide and the M-44 device shall be subject to the restrictions and conditions set forth in OAR 603-057-0335 to 603-057-0350.~~

~~Statutory/Other Authority: ORS 561 & 634~~

~~Statutes/Other Implemented: ORS 634.306(5)~~

~~History:~~

~~AD 6-1997, f. & cert. ef. 6-11-97~~

#### 603-057-0335

~~Sodium Cyanide and M-44 Device; Restrictions on Use~~

~~Only employees of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control, who are licensed as public applicators in the category specified in OAR 603-057-0115(4)(a), shall be entitled to use sodium cyanide and the M-44 device for the control of coyotes and certain other wild canids.~~

~~Statutory/Other Authority: ORS 561 & 634~~

~~Statutes/Other Implemented: ORS 634.306(13) & 634.322(6)~~

~~History:~~

~~AD 6-1997, f. & cert. ef. 6-11-97~~

~~AD 12-1985, f. & ef. 11-27-85~~

~~AD 1-1982, f. & ef. 3-5-82~~

~~AD 7-1977, f. & ef. 4-5-77~~

~~AD 1066(12-75), f. 8-11-75, ef. 10-15-75~~

#### 603-057-0350

#### ~~Sodium Cyanide and the M-44 Device; Records and Reports~~

~~(1) Public pesticide applicators using sodium cyanide and the M-44 device shall not be required to keep records as specified in ORS 634.146 or OAR 603-057-0130, but instead shall make and maintain records which contain but are not limited to the following:~~

~~(a) Species and numbers of animals eradicated, whether target or non-target, and the dates and locations thereof;~~

~~(b) Numbers and locations of devices emplaced, with dates of installations and retrievals;~~

~~(c) Numbers and locations of warning signs posted;~~

~~(d) The name and address of the person on whose property sodium cyanide and the M-44 device was used; and~~

~~(e) The name and address of the pesticide applicator.~~

~~(2) The records required by section (1) of this rule shall be made available to the Department for inspection and verification. Upon request of the Department, such record information shall be submitted to the Department in the form of periodic reports. Such records shall be maintained by the user for at least three years after the cessation of the user use activity.~~

~~Statutory/Other Authority: ORS 561 & 634~~

~~Statutes/Other Implemented: ORS 634.306(13) & 634.322(6)~~

~~History:~~

~~AD 6-1997, f. & cert. ef. 6-11-97~~

AD 12-1985, f. & ef. 11-27-85  
AD 1-1982, f. & ef. 3-5-82  
AD 1066(12-75), f. 8-11-75, ef. 10-15-75

603-057-0355

Sodium Fluoroacetate (Compound 1080) and the Livestock Protection Collar

~~(1) Sodium fluoroacetate (Compound 1080) and the livestock protection collar shall be subject to the restrictions and conditions set forth in OAR 603-057-0360 to 603-057-0375.~~

~~(2) Failure to comply with the restrictions and conditions set forth in OAR 603-057-0360 to 603-057-0375, as determined by the Oregon Department of Agriculture, may be used as a basis for one or more of the following actions:~~

~~(a) To revoke, suspend or refuse to issue or renew the license or certification of an applicant, licensee or certificate holder in accordance with ORS 634.322(4);~~

~~(b) To amend, suspend or revoke the registration(s) pertaining to the livestock protection collar in accordance with ORS 634.322(5);~~

~~(c) To impose a civil penalty, in accordance with ORS 634.900;~~

~~(d) To initiate and pursue any other action of an enforcement nature available through ORS 634.~~

Statutory/Other Authority: ~~ORS 561 & 634~~

Statutes/Other Implemented: ~~ORS 634.306(13) & 634.322(6)~~

History:

~~AD 6-1997, f. & cert. ef. 6-11-97~~

~~AD 7-1977, f. & ef. 4-5-77~~

603-057-0360

Sodium Fluoroacetate (Compound 1080) and the Livestock Protection Collar;  
Restrictions on Use

~~(1) Coyotes shall be the only species that may be considered to be a regulated pest, as defined in OAR 603-057-0001(8), and therefore considered to be a target organism, upon which sodium fluoroacetate (Compound 1080) and the livestock protection collar may be used.~~

~~(2) Only employees of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control, licensed as public pesticide applicators in the subcategory specified in OAR 603-057-0115(4)(b) shall use the livestock protection collar containing sodium fluoroacetate (Compound 1080).~~

~~(3) The following shall apply to use of the livestock protection collar containing sodium fluoroacetate (Compound 1080):~~

~~(a) Use of collars shall conform to all applicable federal, state and local regulations;~~

~~(b) Use of collars shall be limited to appropriate sites within the geographic boundaries of Curry County, Oregon;~~

~~(c) Collars shall only be in the possession of the registrant and its employees, except when in use;~~

~~(d) Collars shall only be filled with Compound 1080 solution by the manufacturer;~~

~~(e) Collars shall be used only to take coyotes that prey upon domestic livestock within fenced pastures no larger than 2,560 acres;~~

~~(f) Collars may be used only after a finding by United States Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control personnel that appropriate non-lethal methods of coyote control, by method, have failed to reduce losses to an acceptable level, and all other available lethal or non-lethal methods have been found to be ineffective or inappropriate;~~

~~(g) Prior to use of the livestock protection collar at a particular site, a preapplication inspection report will be completed by the applicator which identifies the following:~~

~~(A) Non-lethal techniques utilized at the site, and the reason each one was found to be impractical or unsatisfactory;~~

~~(B) Non-lethal techniques considered for the site, and the reason each one was considered impractical or unsatisfactory;~~

~~(C) Lethal techniques utilized at the site, and the reason each one was found to be impractical or unsatisfactory;~~

~~(D) Lethal techniques considered for the site, and the reason each one was considered impractical or unsatisfactory.~~

~~(h) Where collars are in use, each logical point of access shall be conspicuously posted with a bilingual (English/Spanish) warning sign not less than 8" x 10" in size. Such signs shall be inspected weekly to insure their continued presence and legibility, and will be removed when all collars are removed and accounted for;~~

~~(i) Each collar in use shall be inspected by the applicator at least twice a week to insure that it is properly positioned and unbroken;~~

~~(j) Damaged or broken collars shall be removed from the field and either returned to the manufacturer for repair or disposed of properly;~~

~~(k) If a collar is lost, an intensive search for the missing collar shall be conducted within twelve hours from the time the loss is noted. Use of all other collars at the particular site shall be terminated after twelve hours if a search is not conducted for the lost collar and a cause for the loss identified. If the collar is lost due to a deficiency which can be corrected, appropriate corrections will be enacted prior to the continued use of collars on that site;~~

~~(l) If a collar is found to have been punctured by a predator attacking a collared animal, an intensive search shall be conducted for the animal which punctured the collar;~~

~~(m) Disposal of punctured or unserviceable collars and contaminated animal remains, vegetation and soil shall be accomplished by deep burial or burning at a safe location, preferably on the property of the landowner;~~

~~(n) Storage of livestock protection collars containing Compound 1080 shall only be under lock and key in a dry place away from food, feed, domestic animals and corrosive chemicals. Collars shall not be stored in any structure occupied by humans.~~

Statutory/Other Authority: ORS 561 & 634

Statutes/Other Implemented: ORS 634.306(13) & 634.322(6)

History:

AD 6-1997, f. & cert. ef. 6-11-97

AD 10-1987, f. & ef. 7-1-87

AD 7-1977, f. & ef. 4-5-77

603-057-0365

~~Sodium Fluoroacetate (Compound 1080) and the Livestock Protection Collar; Registrant of Livestock Protection Collars~~

~~Only the United States Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control may be the registrant of the livestock protection collar containing the active ingredient sodium fluoroacetate (Compound 1080).~~

Statutory/Other Authority: ORS 561 & 634

Statutes/Other Implemented: ORS 634.306(13) & 634.322(6)

History:

AD 6-1997, f. & cert. ef. 6-11-97

AD 7-1977, f. & ef. 4-5-77

603-057-0375

~~Sodium Fluoroacetate (Compound 1080) and the Livestock Protection Collar; Records and Reports~~



~~(1) Public pesticide applicators using the livestock protection collar shall not be required to keep records as specified in ORS 634.146 or OAR 603-057-0130, but instead shall make and maintain records which contain but are not limited to the following:~~

~~(a) The name and address of the person on whose property the livestock protection collar was used and the name and address of the public pesticide applicator;~~

~~(b) The location and size of agricultural or rangeland areas (fields) in which the livestock protection collars containing sodium fluoroacetate (Compound 1080) were used;~~

~~(c) The date each individual collar was obtained by the applicator, placed on livestock, punctured or ruptured (along with apparent cause), lost or unrecovered, or removed and put in storage;~~

~~(d) The species, date, and location of each animal found poisoned or suspected of having been poisoned as a result of the use of Compound 1080 in livestock protection collars;~~

~~(e) A written description of any intensive search for missing collars or poisoned animals conducted as specified in OAR 603-057-0360(3)(j) and (k).~~

~~(2) The registrant shall keep records of all collars distributed. Records shall include the name and address of each recipient along with dates and numbers of collars received.~~

~~(3) The records required by sections (1) and (2) of this rule shall be maintained by the applicator for a period of three years and shall be made available to the Department for inspection and verification upon request of the Department. This record information shall be submitted to the Department and the U.S. Environmental Protection Agency in the form of periodic reports. Any poisoning of non-target species shall be reported immediately (within three days) to the U. S. Environmental Protection Agency and the Department. Each accident or injury to humans or domestic animals shall likewise be reported.~~

~~Statutory/Other Authority: ORS 561 & 634~~

~~Statutes/Other Implemented: ORS 634.306(13) & 634.322(6)~~

~~History:~~

~~AD 6-1997, f. & cert. ef. 6-11-97~~

~~AD 7-1977, f. & ef. 4-5-77~~

#### 603-057-0376

#### Microencapsulated Methyl Parathion

(1) Microencapsulated methyl parathion shall be subject to the restrictions and conditions on the use thereof as set forth in this rule.

(2) In recognition of the possible injurious or adverse effects to bees from their exposure to microencapsulated methyl parathion, such insecticide:

(a) Shall not be applied on any field crop having an average of five or more blooms per square yard for the area to be sprayed;

(b) Shall not be applied to any corn crop having ten percent or more of its plants with spike anthers;

(c) Shall not be applied on any orchard or vineyard having an average of one or more open blooms per tree or vine (except second bloom of pears); and

(d) Shall not be applied on any field crop, orchard, vineyard, fence line, ditch bank or edge of agricultural land, having an average of five or more weed blooms per square yard.

(3) The following applications of microencapsulated methyl parathion shall be exempt from the restrictions of section (2) of this rule; if such applications are made in accordance with the label directions for such insecticide, and if such label is a part of the federal and state registrations of such pesticide:

(a) Applications on tree fruit in the "Hood River-The Dalles" growing areas made at least 30 days after full bloom of the Red Delicious apples and made not less than 14 days prior to harvest of such tree fruit (the date of Red Delicious apple "full bloom" for any particular area shall be established by the Department, in consultation with the Oregon State University Extension Service Agent for such particular area);

(b) Applications on wheat in growing areas east of the Cascade Mountain Range, during the fall and winter seasons of each year;

(c) Applications on dry onions when such applications are made by ground equipment; and

(d) Applications on white-blooming peas.

(4) Microencapsulated methyl parathion is a highly toxic pesticide and therefore is also subject to the restrictions set forth in OAR 603-057-0200.

Statutory/Other Authority: ORS 561 & 634

Statutes/Other Implemented: ORS 634.306 & 634.322

History:

AD 19-1978, f. & ef. 12-11-78

603-057-0378

Limitations on Pesticide Products Containing Clopyralid

(1) Any application or use of a pesticide product known to contain the active ingredient clopyralid to a location other than an agricultural, forest, right-of way, golf course or cemetery site is prohibited.

(2) For the application or use of a pesticide product containing clopyralid on a site allowed under (1) above, all applicable label instructions must be followed. Providing grass clippings or other materials from a treated site for use in compost is prohibited.

(3) Pesticide products known to contain the active ingredient clopyralid and having product labeling which authorizes application or use on an agricultural, forest, right-of way, golf course or cemetery site, or on any other site, may be registered and distributed during 2003. For 2004 and subsequent years, a pesticide product known to contain the active ingredient clopyralid must satisfy one of the following requirements in order to be registered:

(a) The label must specify that the product may only be used on sites allowed by (1) above; or

(b) The label must clearly and prominently display the following statement: "Use of this product in Oregon is limited to the sites stated on this label which are agricultural, forest, right-of-way, golf course or cemetery sites."

(4) Failure to comply with sections (1), (2), or (3) above may result in one or more of the following actions:

(a) Revocation, suspension or refusal to issue or renew the license or certification of an applicant, licensee or certificate holder in accordance with ORS 634.322(4);

(b) Imposition of a civil penalty, in accordance with ORS 634.900;

(c) Any other enforcement action authorized under ORS 634.

Statutory/Other Authority: ORS 634.322(6) & 634.026(1e)

Statutes/Other Implemented: ORS 634

History:

DOA 26-2003, f. & cert. ef. 7-15-03

DOA 14-2003(Temp), f. & cert. ef. 3-28-03 thru 9-24-03

603-057-0384

Persistent, Bioaccumulative, and Toxic (PBT) Pollutants

(1) The following pesticide active ingredients, previously canceled by the United States Environmental Protection Agency, have been designated as "high priority" persistent, bioaccumulative and toxic pollutants (PBTs) by the Oregon Department of Environmental Quality:

- (a) Aldrin;
- (b) Chlordane;
- (c) Dichlorodiphenyl trichloroethane (DDT), DDD, DDE;
- (d) Dieldrin;
- (e) Hexachlorobenzene;
- (f) Mercury based pesticides including, but not limited to, mercurous; chloride and mercuric chloride;
- (g) Mirex;
- (h) Toxaphene.

(2) In addition to the "high priority" active ingredients listed in (1), the following pesticide active ingredients, having been previously canceled by the United States Environmental Protection Agency have been identified as persistent, bioaccumulative and toxic pollutants (PBTs).

- (a) Heptachlor;
- (b) 2,4,5-Trichlorophenol.

(3) Any application or use of a pesticide product known to contain one or more of the active ingredients identified in (1) or (2) above is herewith prohibited.

(4) Failure to comply with the prohibition specified in (3) above, as determined by the Oregon Department of Agriculture, may be used as a basis for one or more of the following actions:

- (a) To revoke, suspend or refuse to issue or renew the license or certification of an applicant, licensee or certificate holder in accordance with ORS 634.322(4);
- (b) To impose a civil penalty, in accordance with ORS 634.900;
- (c) To initiate and pursue any other action of an enforcement nature available through ORS 634.

Statutory/Other Authority: ORS 634

Statutes/Other Implemented: ORS 634

History:

DOA 31-2000, f. & cert. ef. 11-7-00

DOA 23-2000(Temp), f. & cert. ef. 8-28-00 thru 2-10-01

603-057-0388

Prohibits the Application of Four Neonicotinoid Insecticides

(1) It is prohibited to apply any product containing dinotefuran, imidacloprid, thiamethoxam, or clothianidin, regardless of application method, to linden trees, basswood trees or other Tilia species.

(2) Failure to comply with section (1) above may result in one or more of the following actions:

(a) Revocation, suspension or refusal to issue or renew the license or certification of an applicant, licensee or certificate holder;

(b) Imposition of a civil penalty;

(c) Any other enforcement action authorized under any law.

Statutory/Other Authority: ORS 561.020, 634.322(6) & 634.900

Statutes/Other Implemented: ORS 634

History:

DOA 6-2015, f. & cert. ef. 2-27-15

603-057-0392

Limitations on Pesticide Products Containing Aminocyclopyrachlor

(1) In addition to the other prohibitions stated in this rule, it is prohibited to apply any product containing aminocyclopyrachlor on any of the following sites:

(a) Rights of way;

(b) Natural areas, such as wildlife management areas, wildlife openings and wildlife habitats;

(c) Restoration areas, marshes, swamps, bogs and wetlands; or

(d) Inner or outer banks of ditches or canals.

(2) An exception to the prohibitions in subsections (1)(a) - (1)(c) of this rule is if all of the following conditions are met:

(a) Applications are noncontiguous and, in the aggregate, do not exceed more than five percent of an acre;

(b) Use is limited to one application per 365 days per treated area; and

(c) Use is to control state - or county-listed noxious weeds.

(3) In addition to the other prohibitions stated in this rule, it is prohibited to apply any product containing aminocyclopyrachlor in any area where the roots of nontarget trees or shrubs may extend.

(4) In addition to the other prohibitions stated in this rule, it is prohibited to apply any product containing aminocyclopyrachlor by any type of aerial application method.

(5)(a) In addition to the other prohibitions stated in this rule, it is prohibited to apply any product containing aminocyclopyrachlor in any of the following areas unless the application meets all of the conditions of section (2) of this rule:

(A) Sage-grouse core areas;

(B) Sage-grouse low density areas; or

(C) Sage-grouse general habitat within 3.1 miles of a lek.

(b) For purposes of this section, "core areas," "low density" areas, and "general habitat" are defined in OAR 635-140-0002 and designated in maps maintained by the Oregon Department of Fish and Wildlife.

(6) In addition to the other prohibitions stated in this rule, it is prohibited to allow or provide plant materials, including sawdust, bark or other byproducts from trees, that have been treated with or otherwise exposed to aminocyclopyrachlor for use in compost, mulch or animal bedding that is subsequently used for compost or mulch.

(7) For purposes of this rule, "rights of way" means the following areas involved in common transport:

(a) City, county, state and federal roads and highways;

(b) Railroads and airports;

(c) Electric utilities (transformer stations and substations, switching stations, transmission lines and distribution lines), excluding wind farms;

(d) Pipelines;

(e) Banks of public bargeways and areas around locks and dams; and

(f) Bicycle, bridle, snowmobile and other public recreational paths.

(8) Failure to comply with this rule may result in one or more of the following actions:

(a) Revocation, suspension or refusal to issue or renew the license or certification of an applicant, licensee or certificate holder;

- (b) Imposition of a civil penalty; or
- (c) Any other enforcement action authorized under any law.

Statutory/Other Authority: ORS 561.020, 634.016, 634.306, 634.322, 634.372 & 634.900

Statutes/Other Implemented: ORS 634

History:

DOA 10-2019, adopt filed 05/09/2019, effective 05/09/2019

603-057-0405

#### General Requirements

As specified by Oregon Laws 1999, Chapter 1059, Sections 2 to 11, 15, 20, 21 and 22, each pesticide user must report to the Oregon Department of Agriculture the use of any pesticide product, as defined by ORS 634.006(8) except antimicrobial pesticide products.

(1) "Pesticide user" means any person who uses or applies a pesticide in the course of business or any other for-profit enterprise, or for a governmental entity, or in a location that is intended for public use or access (Chapter 1059, Oregon Laws 1999, Section 2).

(2) The Oregon Department of Agriculture shall determine which pesticide products are antimicrobial, according to the Federal Insecticide, Fungicide and Rodenticide Act, 7 U. S. C. 136(1) (P.L. 92-516, as amended). Antimicrobial products are substances or mixtures of substances used to destroy or suppress the growth of harmful microorganisms, whether bacteria, viruses, or fungi, on inanimate objects and surfaces. Types of antimicrobial pesticides include disinfectants and sanitizers. These products are exempt from reporting.

(3) Pesticide use reporting shall be subject to the conditions set forth in OAR 603-057-0410. Failure to comply with these conditions may be used as a basis for one or more of the following actions:

(a) Revoke, suspend, or refuse to renew the license or certificate of an applicant, licensee or certificate holder in accordance with ORS 634.322(4);

(b) Initiate and pursue any other action of an enforcement nature available through ORS 634.

(4) "Accredited University" as used in Oregon Laws 1999, Chapter 1059 and these rules means a privately or publicly operated institution of higher education accredited by a nationally recognized accrediting agency or association as determined by the U.S. Commissioner of Education.

(5) "Accepted Research Institute" means an institution of higher learning and applied science accepted by the Department.

(6) "Principal Investigator" means a person who leads the activities of a particular research project. In a university setting, this person is a member of the university faculty, and holds, at a minimum, the title or rank of assistant professor or equivalent.

(7) "Ready to Use" pesticide product means a pesticide product used directly from its original container, consistent with labeling, and without dilution or mixing prior to application.

(8) "Researcher" has the same meaning as "Principal Investigator". In a university setting, researcher refers to faculty scientists concentrating on certain areas of applied science or basic research.

(9) "Urban area" means a site that is 'urban, general indoor' as specified in OAR 603-057-0413(7), or a site that is "urban, general outdoor" as specified in OAR 603-057-0413(8).

Statutory/Other Authority: ORS 634, 561.190 & Ch. 1059 OL 1999

Statutes/Other Implemented: Ch. 1059 OL 1999

History:

DOA 11-2006, f. & cert. ef. 4-12-06

DOA 27-2001, f. & cert. ef. 12-4-01

#### 603-057-0410

#### Pesticide Users Required to Report

(1) All pesticide products used by each pesticide user shall be reported at least once yearly to the Department. All pesticide use in a given calendar year shall be reported no later than January 31 of the following calendar year. A pesticide user may report the use of pesticide products on a more frequent basis if so selected by the pesticide user. Each report will include the required pesticide use information for the preceding specified period, or since the most recent filing of a pesticide use report, whichever time period is shorter.

(2) No action specified in OAR 603-057-0405(3) shall be taken for failure to report pesticide use for calendar year 2002, 2003, 2004, 2005, or 2006, or for any calendar year in which the Department does not provide a fully effective means for pesticide users to report pesticide use. Any pesticide use information obtained from pesticide users by the Department, by any means, for calendar year 2002, 2003, 2004, 2005 or 2006 will not be maintained by the Department and will not be made available to any person.

(3) Commercial pesticide operators are required to file the pesticide use report when a commercial pesticide operator uses a pesticide product in the course of business.



(4) All agencies, instrumentalities, subdivisions, counties, cities, towns, municipal corporations, districts, governmental bodies, schools and utilities are required to file the pesticide use report when a pesticide product is used by their employees.

(5) Employers are required to file the pesticide use report when an employee uses a pesticide product as an employee in the scope of his or her employment.

(6) All other pesticide users, other than as described in subsection (3), (4) or (5) of this section, using a pesticide product, are required to file the pesticide use report.

(7) Reports of pesticide use shall be made to the Department using forms or methods specified by the Department.

(8) A pesticide user may authorize another person, or persons, to serve as his/her agent(s) or proxy(ies) in filing pesticide use information with the Department.

Statutory/Other Authority: ORS 634, 561.190 & Ch. 1059 OL 1999

Statutes/Other Implemented: Ch. 1059 OL 1999

History:

DOA 11-2006, f. & cert. ef. 4-12-06

DOA 27-2001, f. & cert. ef. 12-4-01; DOA 23-2002(Temp), f. 12-2-02., cert. ef. 12-4-02 thru 6-1-03; DOA 16-2003(Temp), f. & cert. ef. 4-22-03 thru 10-18-03; DOA 37-2003, f. & cert. ef. 10-15-03

603-057-0411

Pesticide User Information

(1) Before filing pesticides use reports with the Department, each pesticide user shall register with the Department. The Department will record the pesticide user identification information identified below in a database separate from the database used to record reported pesticides use information. The Department will assign to each registered pesticide user a unique identification number. The pesticide user shall use the assigned identification number when filing pesticides use reports with the department.

(2) The following information regarding identification of a pesticide user shall be provided to the Department for the purpose of registering each pesticide user and assigning a unique identification number to each pesticide user.

(a) Identification of the pesticide user required to file the report, which shall be either:

(A) The name of the pesticide user; or

(B) The name of the agency, instrumentality, subdivision, county, city, town, municipal corporation, district, governmental body, school or utility; or

(C) The name of the employer; or

(D) The name of the person using the pesticide.

(b) The mailing address of the pesticide user named, including street or postal address, city, state and five-digit ZIP code.

(c) The telephone number of the pesticide user named.

(d) The facsimile (fax) number of the pesticide user named, if available.

(e) The electronic mail (e-mail) address of the pesticide user named, if available.

(f) The name of the responsible person filing the report for the pesticide user named, if different from the pesticide user named.

(g) The telephone number of the responsible person filing the report for the pesticide user named, if different from the telephone number already provided.

Statutory/Other Authority: ORS 634, 561.190 & Ch. 1059 OL 1999

Statutes/Other Implemented: Ch. 1059 OL 1999

History:

DOA 11-2006, f. & cert. ef. 4-12-06

DOA 27-2001, f. & cert. ef. 12-4-01

603-057-0412

Pesticide Product Identification; Date of Use; Amount

Each report of pesticide use shall include the following information regarding the identification and amount of pesticide product used:

(1) The name of the specific pesticide product used.

(2) The United States Environmental Protection Agency (EPA) registration number of the specific pesticide product used, or, if the product does not have an EPA registration number, the identification number assigned to the product by the Department.

(3) The date the pesticide product was used. If the product was used at a single site or type of site having the same five digit zip code or third-level hydrologic unit location on multiple days in a calendar month, only the date for the last day of the use is to be reported.

(4) The amount of the undiluted pesticide product used, including the appropriate units of measure.

(5) If the product is a "Ready to Use" product then the date of use is the day when the product container is emptied or disposed, and the amount used is the total amount stated on the label.

Statutory/Other Authority: ORS 634, 561.190 & Ch. 1059 OL 1999

Statutes/Other Implemented: Ch. 1059 OL 1999

History:

DOA 11-2006, f. & cert. ef. 4-12-06

DOA 27-2001, f. & cert. ef. 12-4-01

603-057-0413

#### Description of the Type of Site Where the Pesticide Was Used

Each report of pesticide use shall include a general description of the type of site where the pesticide was used. Site descriptions must be chosen from the list of options developed by the Department. Site descriptions, at a minimum, will identify the major site at which the pesticide was applied. Major categories shall include, but not be limited to, the following:

- (1) Agriculture. This shall include the use of pesticides in the production of agricultural crops and livestock (including Christmas tree plantations and commercial nurseries), or on agricultural commodities before movement into channels of commerce, or on agricultural lands, grasslands, or non-crop agricultural lands
- (2) Aquatic. This shall include the use of pesticides in treating standing or running water. Examples of sites include irrigation ditch, lake, or river.
- (3) Forestry. This shall include the use of pesticides in the production of forest crops, or on forestry lands (not including Christmas tree plantations or commercial nurseries).
- (4) Public health and regulatory pest control. This shall include the use of pesticides for the control of any pest that may be deleterious to the public health, including mosquito and other vector and regulatory pest control.
- (5) Right-of-Way. This shall include the use of pesticides in right-of-way areas. Examples of sites include irrigation ditch banks, railroads, road shoulders, or utility lines.
- (6) Research. This shall include the use of one or more specific pesticides with the intent of gathering data needed to satisfy registration requirements of the United States Environmental Protection Agency. If the research is not conducted by a government agency, the pesticide use shall be under the authority of an "experimental use permit" issued by the United States Environmental Protection Agency or issued by the Department.
- (7) Urban, general indoor sites. This shall include the use of pesticides inside dwellings, non-agricultural buildings, establishments, institutions, schools and commercial

transportation vehicles. This shall also include the use of pesticides on commodities, including agricultural commodities stored indoors that have entered into channels of commerce, including commercial warehouses and commercial grain elevators.

(8) Urban, general outdoor sites. This shall include the use of pesticides outside dwellings, non-agricultural buildings, establishments, institutions, or schools for ornamental and turf pest control, including parks, rest areas, and golf courses. This shall also include the use of pesticides on commodities, including agricultural commodities stored outdoors that have entered into channels of commerce.

Statutory/Other Authority: ORS 634, 561.190 & Ch. 1059 OL 1999

Statutes/Other Implemented: Ch. 1059 OL 1999

History:

DOA 11-2006, f. & cert. ef. 4-12-06

DOA 27-2001, f. & cert. ef. 12-4-01

603-057-0414

#### Description of the Purpose of Pesticide Use

Each report of pesticide use shall include a general description of the purpose for the pesticide use. The purpose for the use must be chosen from the list of options developed by the Department. The purpose description, at a minimum, will identify the most applicable major category description for the pesticide use. Major categories include, but are not limited to, the following:

- (1) Weed control;
- (2) Insect control;
- (3) Disease control;
- (4) Rodent control;
- (5) Big game repellant;
- (6) Predator control;
- (7) Plant growth regulation;
- (8) Marine-fouling organism control;
- (9) Wood preservation;
- (10) Bird control;
- (11) Desiccation and defoliation;

- (12) Fish control;
- (13) Research; and
- (14) Slug Control.

Statutory/Other Authority: ORS 634, 561.190 & Ch. 1059 OL 1999  
Statutes/Other Implemented: Ch. 1059 OL 1999  
History:  
DOA 27-2001, f. & cert. ef. 12-4-01

#### 603-057-0415

##### Location of Pesticide Use; Aggregation of Information

Each report of pesticide use shall include the following information regarding the location of a pesticide use made by the pesticide user:

- (1) For uses made to a site in an urban area as defined in OAR 603-057-0405(9), the location shall be reported by identifying the five-digit zip code for the site.
- (2) For uses made to any site not in an urban area as defined in OAR 603-057-0405(9), the location shall be reported by identifying the third-level hydrologic unit for the site.

Statutory/Other Authority: ORS 634, 561.190 & Ch. 1059 OL 1999  
Statutes/Other Implemented: Ch. 1059 OL 1999  
History:  
DOA 11-2006, f. & cert. ef. 4-12-06  
DOA 27-2001, f. & cert. ef. 12-4-01

#### 603-057-0416

##### Reports of Pesticide Use for Research

If the description of pesticide use is "Research" as specified in OAR 603-057-0413(6), then each report of pesticide use shall include the following information:

- (1) Identification of the pesticide user filing the report, including the information required in OAR 603-057-0411.
- (2) The name of the specific pesticide product used.
- (3) The United States Environmental Protection Agency (EPA) registration number of the specific pesticide product used, or, if the product does not have an EPA registration number, the identification number assigned to the product by the Department or the identification number of the product recognized by the Department.
- (4) The identification of the purpose of the pesticide use shall be reported as research.

(5) The description of the site at which the pesticide product was used shall be reported as research.

(6) The location at which the pesticide product was used shall be reported by identifying the third-level hydrologic unit for the site.

(7) The date the pesticide product was used shall be reported as the last day of the calendar month of the use.

(8) The amount of the undiluted pesticide product used in the calendar month, including the appropriate units of measure.

Statutory/Other Authority: ORS 634, 561.190 & Ch. 1059 OL 1999

Statutes/Other Implemented: Ch. 1059 OL 1999

History:

DOA 11-2006, f. & cert. ef. 4-12-06

DOA 27-2001, f. & cert. ef. 12-4-01

603-057-0417

Access to Reported Information

(1) Some information reported to the Department by pesticide users is prohibited from release to the public according to Oregon Laws 1999, Chapter 1059. Information that would reveal the identity of the owner or lessee or the specific location of property where a person has applied a pesticide is prohibited from public release.

(2) Pesticide use information reported under Oregon Laws 1999, Chapter 1059 may be released to certain persons, provided those persons maintain the confidentiality of any information that is required to be treated as confidential. Persons who may receive this information are limited to the following:

(a) Staff of the Department or other federal or state agency which require the information as part of an investigation conducted under provision of law; or

(b) A federal, state or local agency; or

(c) A health or environmental researcher, acting in an official capacity from an accredited university or accepted research institute.

(3) A federal, state or local agency must agree to maintain the confidentiality of the information identified in subsection (1) of this section, unless the public interest, by clear and convincing evidence, requires disclosure in the particular instance.

(4) Any person that releases, or causes to be released, to the public information made confidential by Oregon Laws 1999, Chapter 1059 may be subject to civil penalty as described in OAR 603-057-0420. The agency, university, or research institute

employing or retaining such person or for which such person is acting in an official capacity, may also be subject to civil penalty as described in 603-057-0420.

(5) In addition, if a person causes information identified as confidential to be released or who fails to preserve the confidentiality shall be denied all future access to confidential data collected under 603-057-0410 through 603-057-0416.

Statutory/Other Authority: ORS 634, 561.190 & Ch. 1059 OL 1999

Statutes/Other Implemented: Ch. 1059 OL 1999

History:

DOA 11-2006, f. & cert. ef. 4-12-06

DOA 27-2001, f. & cert. ef. 12-4-01

#### 603-057-0418

#### Requests for Pesticide Use Information

(1) An agency seeking confidential information shall make a formal written request to the Department that shall:

- (a) Identify the requesting agency.
- (b) Identify the Principal Investigator for the agency.
- (c) Describe the information sought.
- (d) Explain the reason for requesting the information, including the use that will be made of the requested information.
- (e) Include a completed and signed confidentiality agreement prepared by the Department.
- (f) Identify each person having access to the information, and the position of each person within the agency.
- (g) Identify the person responsible for maintaining the security of the information.
- (h) Explain the procedures by which the requesting agency will assure the confidentiality of the information.

(2) A health or environmental researcher acting in an official capacity from an accredited university seeking confidential information shall make a formal written request to the Department that shall:

- (a) Describe the information sought.

(b) Describe the research being conducted, including identity of the Principal Investigator, purpose of the research and the use that will be made of the requested information.

(c) Include a copy of the university's formal review and signed acceptance of the research project.

(d) Include a completed and signed confidentiality agreement prepared by the Department.

(e) Identify each person having access to the information, and the position of each person within the university.

(f) Describe the procedures by which the requesting researcher and university will assure the confidentiality of the information.

(3) A health or environmental researcher acting in an official capacity from an accepted research institute seeking access to confidential information shall make a formal written request to the Department which shall be equivalent in content to (2) above.

(4) The Department will consider each request for pesticide use information, as described in (1), (2) and (3) above, as follows:

(a) The Department will respond to the request within 30 days of receipt of the request.

(b) The Department, in its discretion, may request more detailed explanations in the request for information before considering it.

(c) If the request is approved, the requested information may be released to the requestor. The Department will release only the information that is directly pertinent to the research project or agency need. Information will be released in a manner that achieves the highest level of confidentiality but still provides pertinent data.

(d) If the request is denied, the requester will be informed of the basis for denial.

(5) Any breach of the confidentiality agreement as determined by the Department, may result in a civil penalty as set forth in 603-057-0420.

Statutory/Other Authority: ORS 634, 561.190 & Ch. 1059 OL 1999

Statutes/Other Implemented: Ch. 1059 OL 1999

History:

DOA 27-2001, f. & cert. ef. 12-4-01

603-057-0420

Civil Penalty Determination for Failure to Comply with Confidentiality Agreement



When the Department has determined that a violation of 603-057-0417 has occurred the Director shall calculate the amount of the civil penalty to be assessed utilizing the formula:  $BN + (0.1 \times BN) (T + D) = \text{Penalty Amount}$  where:

(1) B = Base fine, the primary fine for violating the confidentiality agreement. This base amount is set at \$2,000.

(2) N = Number of times, including the current violative act, that the person has been determined by the Department to have committed this violative act.

(3) T = Preventability of violation and whether negligence or misconduct was involved. T will be weighted from 0 to 7 in the following way:

(a) 0 = information is insufficient to make any finding;

(b) 3 = the person's actions determined to be violative were reasonably avoidable;

(c) 7 = the person's actions determined to be violative were flagrant.

(4) D = Direct release of confidential information. D will be weighted from 0 to 5 in the following way:

(a) 0 = information is insufficient to make any finding;

(b) 1 = information protected under 603-057-0417 was not directly released, but the information released was sufficient to allow a reasonable determination of the protected information;

(c) 3 = either the identity of the owner or lessee of a specific property, or the address of the property itself where a pesticide had been applied was directly released;

(d) 5 = both the identity of the owner or lessee of a specific property and the address of the property itself where a pesticide had been applied was directly released.

Statutory/Other Authority: ORS 634, 561.190 & Ch. 1059 OL 1999

Statutes/Other Implemented: Ch. 1059 OL 1999

History:

DOA 27-2001, f. & cert. ef. 12-4-01

603-057-0425

Household Pesticide Use Information

According to Chapter 1059, Oregon Laws 1999, Section 4 (5), the Department is to develop a mechanism(s) to identify the use of pesticides by households. The following rules shall apply;

(1) The Department shall utilize a survey. Such a survey shall have the following characteristics:

(a) Be statistically valid such that information obtained from participating households can be used to accurately estimate pesticide use by all households;

(b) Gathers information similar in content to information reported by pesticide users; and

(c) Includes the entire state.

(2) The Department may utilize the assistance of other agencies, including federal, state and local, and of private entities in developing, implementing and maintaining a mechanism to identify pesticide use by households.

Statutory/Other Authority: ORS 634, 561.190 & Ch. 1059 OL 1999

Statutes/Other Implemented: Ch. 1059 OL 1999

History:

DOA 11-2006, f. & cert. ef. 4-12-06

DOA 27-2001, f. & cert. ef. 12-4-01

603-057-0500

Definitions

In addition to the definitions set forth in ORS 634.006 and OAR 603-057-0001, the following shall apply:

(1) "Director" means the Director of the Department of Agriculture or the Director's authorized deputies or officers.

(2) "Enforcement" means any documented action taken by the Department to address a violation.

(3) "Flagrant" means any violation where the Department has documented evidence that the respondent had actual knowledge of the law and knowingly committed the violation.

(4) "Gravity of Effect" is the ranking of a violation with respect to its effect, or potential effect, on the public interests reflected in ORS 634. A violation is ranked as high, medium, or low.

(5) "Gross negligence" means an act or omission that does not reflect an exercise of reasonable care under the circumstances and that is characterized by conscious indifference to or reckless disregard of any purpose of the State Pesticide Control Act.

(6) "Injury" includes, but is not limited to, adulteration.

(7) "Intentionally" means the person acts, or fails to act, with a deliberate or an express purpose. For instance, a person acts intentionally when the person either consciously chooses not to determine whether a pesticide label authorizes use of a pesticide on a particular crop, or when the person knows that a pesticide label does not authorize use of the pesticide on a particular crop but still chooses to apply the pesticide to the crop.

(8) "Knowingly" means the person acts, or fails to act, with a practical understanding of, or a distinct skill in, the general activity that was obtained through such means as instruction, study, practice, or experience.

(9) "Magnitude of Violation" is the categorization of a violation in relation to other types of violations after considering its potential to affect the public interests reflected in ORS 634. A violation is categorized as major, moderate, or minor.

(10) "Person" includes individuals, corporations, associations, firms, joint stock companies, public and municipal corporations, political subdivisions of the state and any agencies thereof, and the Federal Government and any agency thereof.

(11) "Violation" is an act or omission that does not comply with a provision of ORS 634 that relates to pesticide application, sale, or labeling.

(12) "Willfully" means the person acted, or failed to act, after calculating and considering the potential effects and consequences.

(13) "Willful misconduct" means an act or omission that is characterized by or resulting from calculation and consideration of effects and consequences, and with awareness that the act or omission will be incompatible with any purpose of the State Pesticide Control Act.

(14) "School" has the meaning defined in ORS 634.700

Statutory/Other Authority: ORS 561, 634 & 183.335

Statutes/Other Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372 & 634.900 - 634.915

History:

DOA 1-2019, amend filed 01/23/2019, effective 01/23/2019

DOA 21-2012, f. & cert. ef. 7-10-12

DOA 6-2009, f. & cert. ef. 5-7-09

DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09

AD 4-1990, f. & cert. ef. 3-16-90

603-057-0502

Civil Penalties Generally

(1) In addition to any other penalty provided by law, the Director may assess a civil penalty for violation of any provision of ORS 634 relating to pesticide ~~use~~ application, sale **or distribution**, or labeling.

(2) Where the Director determines that a violation occurred before June 25, 2007, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0525 and 603-057-0529. The amount of such civil penalty for a first violation shall not exceed \$1,000, and the amount of such civil penalty for any subsequent violation of the same provision shall not exceed \$2,000.

(3) Where the Director determines that a violation did not result from gross negligence or willful misconduct, and if the violation occurred between June 25, 2007 and December 31, 2015, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0525 and 603-057-0530. The amount of such civil penalty for a first violation shall not exceed \$1,000, and the amount of such civil penalty for any subsequent violation of the same provision shall not exceed \$2,000.

(4) Where the Director determines that a violation did not result from gross negligence or willful misconduct, and if the violation occurred on or after January 1, 2016, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0525 and 603-057-0531. The amount of such civil penalty for a first violation shall not exceed \$2,000, and the amount of such civil penalty for any subsequent violation of the same provision shall not exceed \$4,000.

(5) Where the Director determines that a violation resulted from gross negligence or willful misconduct and occurred on or after June 25, 2007, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0525 and 603-057-0532. The amount of such civil penalty for a first or a subsequent violation shall not exceed \$10,000.

(6) Where the Director determines that a violation involves a failure to comply with a confidentiality agreement related to the pesticide use reporting program, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0420. The amount of such civil penalty for a first or subsequent violation of such confidentiality agreement shall not exceed \$10,000.

(7) If a person requests a hearing, nothing in this division of administrative rules prevents the Department from amending the notice to impose civil penalties for the violation under OAR 603-057-0525 and either OAR 603-057-0530 or 603-057-0531, and, in the alternative, under OAR 603-057-0525 and 603-057-0532. The amended notice will specify which civil penalty will be assessed if the hearing does not occur for any reason.

(8) A civil penalty imposed under the applicable statutes and these rules may be remitted or reduced upon such terms and conditions as the Director considers proper and consistent with public health and safety.

(9) Civil penalties shall be due and payable ten (10) business days after the order becomes final by operation of law or on appeal. A person may pay a civil penalty before an order becomes final. Payment of a civil penalty before an order becomes final is an admission by the person of all of the allegations in the Notice of Imposition of Civil Penalty.

Statutory/Other Authority: ORS 561, 634 & 183.335(5)

Statutes/Other Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372 & 634.900 - 634.915

History:

DOA 5-2016, f. & cert. ef. 2-26-16

DOA 6-2009, f. & cert. ef. 5-7-09

DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09

#### 603-057-0505

##### Consolidation of Proceedings

Notwithstanding that each and every violation is a separate and distinct act and in cases of continuing violations, each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations against a person may be consolidated into a single proceeding.

Statutory/Other Authority: ORS 561 & 634

Statutes/Other Implemented: ORS 634.306

History:

AD 4-1990, f. & cert. ef. 3-16-90

#### 603-057-0510

##### Notice of Violation, Notice of Assessment of Civil Penalties, and Notice of Contested Case Rights and Procedures

(1) The Director may determine that a person violated a provision of ORS 634 and decide to not impose a civil penalty. In such circumstances, the Director will issue a written Notice of Violation. The Notice of Violation shall inform a person of the existence of a violation and the consequences of non-compliance.

(2) The Director may determine that a person violated a provision of ORS 634 relating to pesticide application, sale or labeling, and decide to impose a civil penalty. In such circumstances, the Director will issue a written Notice of Imposition of Civil Penalty. The Notice of Imposition of Civil Penalty will inform the person of the existence of a violation, state the amount of the penalty imposed for the violation, and summarize how the penalty was calculated.

(3) Notices of Violation and Notices of Imposition of Civil Penalties shall be served by registered or certified mail.

(4) Notices of Violation and Notices of Imposition of Civil Penalties shall include, but not be limited to:

(a) A caption with the name of the Department and with the name of the person to whom the notice is issued;

(b) A reference to the particular sections of the statutes and administrative rules involved;

(c) A short and plain statement of the matters asserted or charged;

(d) A statement of the person's right to be represented by counsel and that legal aid organizations may be able to assist a person with limited financial resources;

(e) A statement of the person's right to request a hearing;

(f) A statement of the procedure to request a hearing, including but not limited to the following;

(A) Any request for hearing must be in writing;

(B) Any request for hearing must be received by the Department within ten (10) business days of the date the Department mailed the notice; and

(C) The address to which a request for hearing must be sent;

(g) A statement that if a request for hearing is not received by the Department within the time stated in the notice the person will have waived the right to a contested case hearing;

(h) A statement of the authority and jurisdiction under which a hearing will be held on the matters asserted or charged;

(i) A statement that if the person requests a hearing a Notice of Contested Case Rights and Procedures will be provided before any hearing;

(j) A statement indicating whether and under what circumstances an order by default may be entered, including but not limited to, that the notice becomes a final order unless the person makes a timely written request for a hearing; and

(k) Other information required by law.

(5) Notices of Violation and Notices of Imposition of Civil Penalties may also include additional information deemed appropriate by the Director, including but not limited to the following:

(a) A statement that the record of the proceeding to date, including information in the Department's file or files on the subject of the contested case and all materials submitted by a person, automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and

(b) A statement that a collaborative dispute resolution process is available if the person requests a hearing as stated in the notice.

(6) If a person timely requests a hearing for either a Notice of Violation or a Notice of Imposition of Civil Penalty, the Department will mail a written Notice of Contested Case Rights and Procedures to the person before the commencement of the hearing, or request that an administrative law judge inform the person of the rights and procedures.

Statutory/Other Authority: ORS 561, 634 & 183.335(5)

Statutes/Other Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372 & 634.900 - 634.915

History:

DOA 6-2009, f. & cert. ef. 5-7-09

DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09

AD 4-1990, f. & cert. ef. 3-16-90

603-057-0520

Entry of Order and Appeal Rights

(1) If a person, having been served a Notice of Violation or a Notice of Imposition of Civil Penalty, fails to request a hearing as specified in OAR 603-057-0510(4)(f), or if a hearing is not held for any reason, or if after the hearing the person is found to be in violation, an order may be issued by the Director. If a Notice of Imposition of Civil Penalty was served, the order may assess a civil penalty.

(2) The order shall be signed by the Director.

(3) The order, if not appealed as provided in ORS 183.480 to 183.497 or if sustained on appeal, shall constitute a judgment. If any civil penalty has not been paid when due and payable, the order may be recorded with the county clerk in any county of this state. The clerk shall record the name of the person incurring the penalty and the amount of

the penalty in the County Clerk Lien Record. Recording the order has the effects provided for in ORS 205.125 and 205.126, including but not limited to the effect of becoming a lien upon the title of any interest in real property located in that county and owned by the person. The Department may enforce the order as provided in ORS 205.125 and 205.126, bring an action in a court of this state to recover the civil penalty, or take any other action authorized by law to enforce the order.

Statutory/Other Authority: ORS 561, 634 & 183.335(5)

Statutes/Other Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372 & 634.900 - 634.915

History:

DOA 6-2009, f. & cert. ef. 5-7-09

DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09

AD 4-1990, f. & cert. ef. 3-16-90

603-057-0525

### **Civil Penalties; Magnitude of Violation and Gravity of Effect**

(1) The Director will consider the magnitude of the violation and its gravity of effect when calculating a civil penalty for a violation.

(a) Determine the magnitude of the violation as specified in subsection (2) of this section.

(b) Determine the gravity of effect pertinent to the violation as specified in subsection (3) of this section.

(2) Magnitude of Violation: Violations are categorized as to their magnitude of violation as follows:

(a) Category I (Major):

(A) Make false or misleading claims through any media, relating to the effect of pesticides or application methods to be utilized (ORS 634.372(1));

(B) As a pesticide applicator or operator intentionally or willfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling (ORS 634.372(2));

(C) As a pesticide consultant recommend the application or use of any pesticide inconsistent with its labeling (ORS 634.372(2));



(D) As a pesticide dealer knowingly distribute any pesticide for application or use inconsistent with its labeling (ORS 634.372(2));

(E) Perform pesticide application activities in a faulty, careless or negligent manner (ORS 634.372(4));

(F) As a pesticide dealer refuse or neglect to prepare required records of restricted use and highly toxic pesticide product sales and to maintain those records for at least three years prior to the date of inspection, which include, but are not limited to, the purchaser's name, address and certification number, sale date, and identification and quantity of product sold (ORS 634.372(5), OAR 603-057-0140). Four or more items of required information missing and/or incorrectly recorded;

(G) As a pesticide operator, public applicator or pesticide applicator not employed by a pesticide operator, refuse or neglect to prepare required pesticide application records, and to maintain those records for at least three years prior to the date of inspection, which include the name of the employer or customer, location, date, approximate time application was made, supplier and identity of product applied, amount of product applied, the specific property or the crop to which application was made, type of application equipment used, and the full name of the applicator or trainee who made the application (ORS 634.372(5); 634.146(1); OAR 603-057-0130). Four or more items of required information missing and/or incorrectly recorded;

(H) Prepare required records, reports or application forms which are false, misleading or fraudulent (ORS 634.372(6));

(I) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesticide applicator or certified private applicator performing the actual application, or supervising such application if performed by a pesticide trainee (ORS 634.372(7));

(J) As a pesticide applicator, work or engage in the application of any classes of pesticides without first obtaining and maintaining a pesticide applicator's license, or apply pesticides which are not specifically authorized by such license (ORS 634.372(8)). No license;

(K) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides on the property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by the license issued by the Department. Further, no such person shall employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee (ORS 634.372(9));

(i) Firm licensing — No license;

(ii) Employee licensing — No license.

(L) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainees license and is otherwise in compliance with the provisions of this chapter (ORS 634.372(10). No license;

(M) Act as or purport to be, a pesticide dealer or advertise as such without first obtaining and maintaining a pesticide dealer's license (ORS 634.372(11));

(N) Act as or purport to be a pesticide consultant without first obtaining and maintaining a pesticide consultant's license (ORS 634.372(12));

(O) Apply any pesticide classified as a restricted-use or highly toxic pesticide to agricultural, horticultural or forest crops on land owned or leased by the person without first obtaining and maintaining a private applicator certificate (ORS 634.372(13));

(P) As a person described in ORS 634.106(5), use power-driven pesticide application equipment or devices (use hand or backpack types only), or use or apply any pesticide other than those prescribed by the Department (ORS 634.372(14));

(Q) Deliver, distribute, sell or offer for sale any pesticide which has been misbranded (ORS 634.372(15));

(R) Formulate, deliver, distribute, sell or offer for sale any pesticide which is adulterated (ORS 634.372(16));

(S) Make application of pesticides, by aircraft or otherwise, within a protected or restricted area without first obtaining a permit for such application from the committee of the protected or restricted area in which the application is to be made, nor shall such person make such an application contrary to the conditions or terms of the permit so issued (ORS 634.372(20));

(T) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to plant damage as determined by the Department, without first obtaining a permit for such use as provided in ORS 634.322(10); 634.372(21));

(U) Sell, use or remove any pesticide or device subjected to a "stop sale, use or removal" order until the pesticide or device has been released there-from as provided in ORS 634.322(3) (634.372(22));

(V) Other violations with a substantially similar potential to affect the public interests reflected in ORS 634.

(b) Category II (Moderate):

(A) Operate a faulty or unsafe spray apparatus, aircraft or other application device or equipment (ORS 634.372(3));

(B) As a pesticide dealer refuse or neglect to prepare required records of restricted use and highly toxic pesticide product sales and to maintain those records for at least three years prior to the date of inspection, which include, but are not limited to, the purchaser's name, address and certification number, sale date, and identification and quantity of product sold (ORS 634.372(5); OAR 603-057-0140). Two or three items of required information missing and/or incorrect;

(C) As a pesticide operator, public applicator or pesticide applicator not employed by a pesticide operator, refuse or neglect to prepare required pesticide application records, and to maintain those records for at least three years prior to the date of inspection, which include the name of the employer or customer, the location, date, approximate time application was made, supplier and identity of product applied, amount of product applied, the specific property or the crop to which application was made, type of application equipment used, and the full name of the applicator or trainee who made the application (ORS 634.372(5); 634.146(1); OAR 603-057-0130). Two or three items of required information missing and/or incorrectly recorded;

(D) As a pesticide applicator, work or engage in the application of any classes of pesticides without applicator's license, or apply pesticides which are not specifically authorized by such license (ORS 634.372(8)). Inappropriate license;

(E) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides on the property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by the license issued by the Department. Further, no such person shall employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee (ORS 634.372(9)):

(i) Firm licensing — Inappropriate license;

(ii) Employee licensing — Inappropriate license.

(F) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's certificate and is otherwise in compliance with the provisions of this chapter (ORS 634.372(10)). Inappropriate license;

(G) Formulate, deliver, distribute, sell or offer for sale any pesticide which has not been registered as required by ORS 634.016 (634.372(17));

(H) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride which is not distinctly colored (ORS 634.372(18));

(I) Distribute sell or offer for sale any pesticide except in the manufacturers original unbroken package (ORS 634.372(19));

(J) Other violations with a substantially similar potential to affect the public interests reflected in ORS 634.

(c) Category III (Minor):

(A) As a pesticide dealer refuse or neglect to prepare required records of restricted use and highly toxic pesticide product sales and to maintain those records for at least three years prior to the date of inspection, which include, but are not limited to, the purchaser's name, address and certification number, sale date, and identification and quantity of product sold (ORS 634.372(5); OAR 603-057-0140). One item of required information missing and/or incorrectly recorded;

(B) As a pesticide operator, public applicator or pesticide applicator not employed by a pesticide operator, refuse or neglect to prepare required pesticides application records, and to maintain those records for at least three years prior to the date of inspection, which include the name of the employer or customer, the location, date, approximate time application was made, supplier and identity of product applied, amount of product applied, the specific property or the crop to which application was made, type of application equipment used, and the full name of the applicator or trainee who made the application (ORS 634.372(5); 634.146(1); OAR 603-057-0130). One item of required information missing and/or incorrectly recorded;

(C) Other violations with a substantially similar potential to affect the public interests reflected in ORS 634.

(3) Gravity of Effect: The Director shall rank the violation as to its gravity of effect. Following are the factors that may be considered in assigning a gravity ranking to a specific violation. The existence of one or more factors determined to be of high level shall result in the gravity being ranked high level. Lacking any factor determined to be high level, the existence of one or more factors determined to be of medium level shall result in the gravity being ranked medium level. Lacking any factor determined to be of high or medium level shall result in the gravity being ranked low level:

(a) Rank — High Level:

(A) Human Threat: Injury or illness occurred which was confirmed by medical evaluation conducted through the Oregon Pesticide Analytical And Response Center to have been caused by the pesticide exposure;

(B) Environmental Threat:

(i) Evidence of injury to crops, wildlife, and/or livestock documented by the Department or other appropriate federal or state agency; or

(ii) Evidence of surface or groundwater contamination documented by the Department or other appropriate federal or state agency.

(C) Pesticide:

- (i) Designated as restricted use or highly toxic; or
- (ii) Use or distribution halted due to emergency suspension.

(D) Conditions of Usage:

- (i) Wide area of application;
- (ii) Use in area of high population density (e.g., urban, suburban); or
- (iii) Usage resulted in a pesticide residue or metabolite on a food or feed crop, on a raw agricultural commodity, or on a crop having food or feed by-products, and for which there is no tolerance or exemption from tolerance established, or for which the established tolerance was exceeded.
- (iv) Usage resulting in a pesticide residue or a metabolite of a pesticide being deposited onto a school as defined in OAR 603-057-0500(14) by a person other than that authorized by the school's governing body as defined in ORS 634.700(2).

(b) Rank — Medium Level:

(A) Human Threat: Physical irritation occurred which was confirmed by medical evaluation conducted through the Oregon Pesticide Analytical And Response Center to have been caused by pesticide exposure.

(B) Environmental Threat: Symptoms of exposure visible in crops, wildlife, and/or livestock documented by the Department or other appropriate federal or state agency.

(C) Conditions of Usage:

- (i) Moderate area of application; or
- (ii) Use in area of medium population density.

Statutory/Other Authority: ORS 561, 634 & 183.335(5)

Statutes/Other Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372 & 634.900 - 634.915

History:

DOA 21-2012, f. & cert. ef. 7-10-12

DOA 6-2009, f. & cert. ef. 5-7-09

DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09

AD 4-1990, f. & cert. ef. 3-16-90

Civil Penalty For A Violation Occurring Before June 25, 2007; Formula for Amount

(1) When the Director determines that a violation occurred before June 25, 2007, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0525 and this section. To determine the amount of the civil penalty, calculate it utilizing the formula:  $NB + [(1 \times NB) \times (P + H + R + C)] = \text{Penalty Amount}$  where:

(a) N = the number of times, within a period of three years prior to and including the date of the current violative act, that the person has been determined by the Director to have committed that violative act;

(b) B = the base penalty determined using the following matrix: [Matrix not included. See ED. NOTE.]

(A) The Magnitude of Violation is determined according to OAR 603-057-0525(2).

(B) The Gravity of Effect is determined according to OAR 603-057-0525(3).

(c) P = past occurrence of unrelated violations under ORS Chapter 634 for a period of three years prior to the date of the current violative act. P will be weighted from 0 to 6 in the following manner:

(A) 0 = no prior violation or insufficient evidence on which to base a finding;

(B) 1 = past occurrence of an unrelated Category III violation;

(C) 2 = past occurrence of an unrelated Category II violation or two unrelated Category III violations;

(D) 3 = past occurrence of an unrelated Category I violation, two unrelated Category II violations or three unrelated Category III violations;

(E) 4 = past occurrence of two unrelated Category I violations, three unrelated Category II violations or four unrelated Category III violations;

(F) 5 = past occurrence of three unrelated Category I violations, four unrelated Category II violations, or five or more unrelated Category III violations;

(G) 6 = past occurrence of three or more unrelated Category I violations or five or more unrelated Category II violations.

(d) H = History of the person in taking all feasible steps or procedures necessary or appropriate to correct a violative action. H will be weighted from -2 to 2 in the following way:

(A) -2 = the person took all feasible steps or procedures to correct any prior violations;

(B) O = there is no prior history or insufficient information on which to base a finding;

(C) 1 = the person took some, but not all feasible steps or procedures to correct prior violations;

(D) 2 = the person took no action to correct prior violations.

(e) R = preventability of violation. R will be weighted from -2 to 7 in the following way:

(A) -2 = the person's actions determined to be violative were unavoidable;

(B) O = information is insufficient to make any finding;

(C) 3 = the person's actions determined to be violative were reasonably avoidable;

(D) 7 = the person's actions were flagrant.

(f) C = cooperativeness on the part of the person to assist the department in its investigation and to the extent possible, rectify the violation. C will be weighted from -2 to 2 in the following way:

(A) -2 = the person is cooperative;

(B) -1 = the person provides limited cooperation;

(C) O = the person is neither cooperative nor uncooperative;

(D) 1 = the person is generally uncooperative;

(E) 2 = the person is uncooperative.

(2) If the calculation utilizing the formula in this section results in an amount more than \$1,000 for a first violation of any provision of ORS 634, the Director shall assess a civil penalty of \$1,000. If the calculation utilizing the formula in this section results in an amount more than \$2,000 for any subsequent violation of the same provision of ORS 634, the Director shall assess a penalty of \$2,000. In addition, the Director may consider this adjustment if the Director remits or reduces the amount as provided in ORS 634.910 or OAR 603-057-0502(6).

[ED. NOTE: Matrix referenced is available from the agency.]

Statutory/Other Authority: ORS 561, 634 & 183.335(5)

Statutes/Other Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372 & 634.900 - 634.915

History:  
DOA 5-2016, f. & cert. ef. 2-26-16

603-057-0530

Civil Penalty For A Violation Not Resulting From Gross Negligence or Willful Misconduct Between June 25, 2007 and December 31, 2015; Formula for Amount

(1) When the Director determines that the violation did not result from gross negligence or willful misconduct, and if the violation occurred between June 25, 2007 and December 31, 2015, the Director will determine the amount of the civil penalty using this section. To determine the amount of the civil penalty, calculate it utilizing the formula:  
$$NB + [(1 \times NB) \times (P + H + R + C)] = \text{Penalty Amount where:}$$

(a) N = the number of times, within a period of three years prior to and including the date of the current violative act, that the person has been determined by the Director to have committed that violative act;

(b) B = the base penalty determined using the following matrix: [Matrix not included. See ED. NOTE.]

(A) The Magnitude of Violation is determined according to OAR 603-057-0525(2).

(B) The Gravity of Effect is determined according to OAR 603-057-0525(3).

(c) P = past occurrence of unrelated violations under ORS Chapter 634 for a period of three years prior to the date of the current violative act. P will be weighted from 0 to 6 in the following manner:

(A) 0 = no prior violation or insufficient evidence on which to base a finding;

(B) 1 = past occurrence of an unrelated Category III violation;

(C) 2 = past occurrence of an unrelated Category II violation or two unrelated Category III violations;

(D) 3 = past occurrence of an unrelated Category I violation, two unrelated Category II violations or three unrelated Category III violations;

(E) 4 = past occurrence of two unrelated Category I violations, three unrelated Category II violations or four unrelated Category III violations;

(F) 5 = past occurrence of three unrelated Category I violations, four unrelated Category II violations, or five or more unrelated Category III violations;

(G) 6 = past occurrence of three or more unrelated Category I violations or five or more unrelated Category II violations.



(d) H = History of the person in taking all feasible steps or procedures necessary or appropriate to correct a violative action. H will be weighted from -2 to 2 in the following way:

(A) -2 = the person took all feasible steps or procedures to correct any prior violations;

(B) O = there is no prior history or insufficient information on which to base a finding;

(C) 1 = the person took some, but not all feasible steps or procedures to correct prior violations;

(D) 2 = the person took no action to correct prior violations.

(e) R = preventability of violation. R will be weighted from -2 to 7 in the following way:

(A) -2 = the person's actions determined to be violative were unavoidable;

(B) O = information is insufficient to make any finding;

(C) 3 = the person's actions determined to be violative were reasonably avoidable;

(D) 7 = the person's actions were flagrant.

(f) C = cooperativeness on the part of the person to assist the department in its investigation and to the extent possible, rectify the violation. C will be weighted from -2 to 2 in the following way:

(A) -2 = the person is cooperative;

(B) -1 = the person provides limited cooperation;

(C) O = the person is neither cooperative nor uncooperative;

(D) 1 = the person is generally uncooperative;

(E) 2 = the person is uncooperative.

(2) If the calculation utilizing the formula in this section results in an amount more than \$1,000 for a first violation of any provision of ORS 634, the Director shall assess a civil penalty of \$1,000. If the calculation utilizing the formula in this section results in an amount more than \$2,000 for any subsequent violation of the same provision of ORS 634, the Director shall assess a penalty of \$2,000. In addition, the Director may consider this adjustment if the Director remits or reduces the amount as provided in ORS 634.910 or OAR 603-057-0502(6).

[ED. NOTE: Matrix referenced is available from the agency.]

Statutory/Other Authority: ORS 561, 634 & 183.335(5)

Statutes/Other Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372 & 634.900 - 634.915

History:

DOA 5-2016, f. & cert. ef. 2-26-16

DOA 6-2009, f. & cert. ef. 5-7-09

DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09

AD 22-1990, f. & cert. ef. 12-17-90

AD 16-1990(Temp), f. & cert. ef. 8-10-90

AD 4-1990, f. & cert. ef. 3-16-90

603-057-0531

Civil Penalty For A Violation Not Resulting From Gross Negligence or Willful Misconduct on or after January 1, 2016; Formula for Amount

(1) When the Director determines that the violation did not result from gross negligence or willful misconduct, and if the violation occurred on or after January 1, 2016, the Director will determine the amount of the civil penalty using this section. To determine the amount of the civil penalty, calculate it utilizing the formula:  $NB + [(1 \times NB) \times (P + H + R + C)] = \text{Penalty Amount}$  where:

(a) N = the number of times, within a period of three years prior to and including the date of the current violative act, that the person has been determined by the Director to have committed that violative act;

(b) B = the base penalty determined using the following matrix: [Matrix not included. See ED. NOTE.]

(A) The Magnitude of Violation is determined according to OAR 603-057-0525(2).

(B) The Gravity of Effect is determined according to OAR 603-057-0525(3).

(c) P = past occurrence of unrelated violations under ORS Chapter 634 for a period of three years prior to the date of the current violative act. P will be weighted from 0 to 6 in the following manner:

(A) 0 = no prior violation or insufficient evidence on which to base a finding;

(B) 1 = past occurrence of an unrelated Category III violation;

(C) 2 = past occurrence of an unrelated Category II violation or two unrelated Category III violations;

(D) 3 = past occurrence of an unrelated Category I violation, two unrelated Category II violations or three unrelated Category III violations;

(E) 4 = past occurrence of two unrelated Category I violations, three unrelated Category II violations or four unrelated Category III violations;

(F) 5 = past occurrence of three unrelated Category I violations, four unrelated Category II violations, or five or more unrelated Category III violations;

(G) 6 = past occurrence of three or more unrelated Category I violations or five or more unrelated Category II violations.

(d) H = History of the person in taking all feasible steps or procedures necessary or appropriate to correct a violative action. H will be weighted from -2 to 2 in the following way:

(A) -2 = the person took all feasible steps or procedures to correct any prior violations;

(B) O = there is no prior history or insufficient information on which to base a finding;

(C) 1 = the person took some, but not all feasible steps or procedures to correct prior violations;

(D) 2 = the person took no action to correct prior violations.

(e) R = preventability of violation. R will be weighted from -2 to 7 in the following way:

(A) -2 = the person's actions determined to be violative were unavoidable;

(B) O = information is insufficient to make any finding;

(C) 3 = the person's actions determined to be violative were reasonably avoidable;

(D) 7 = the person's actions were flagrant.

(f) C = cooperativeness on the part of the person to assist the department in its investigation and to the extent possible, rectify the violation. C will be weighted from -2 to 2 in the following way:

(A) -2 = the person is cooperative;

(B) -1 = the person provides limited cooperation;

(C) O = the person is neither cooperative nor uncooperative;

(D) 1 = the person is generally uncooperative;

(E) 2 = the person is uncooperative.

(4) If the calculation utilizing the formula in this section results in an amount more than \$2,000 for a first violation of any provision of ORS 634, the Director shall assess a civil penalty of \$2,000. If the calculation utilizing the formula in this section results in an amount more than \$4,000 for any subsequent violation of the same provision of ORS 634, the Director shall assess a penalty of \$4,000. In addition, the Director may consider this adjustment if the Director remits or reduces the amount as provided in ORS 634.910 or OAR 603-057-0502(6).

[ED. NOTE: Matrix referenced is available from the agency.]

Statutory/Other Authority: ORS 634; 2015 HB 3549, 2015 HB 5002 & 2015 SB 5507  
Statutes/Other Implemented: ORS 634; 2015 HB 3549, 2015 HB 5002 & 2015 SB 5507  
History:  
DOA 16-2018, minor correction filed 04/13/2018, effective 04/13/2018  
DOA 5-2016, f. & cert. ef. 2-26-16

#### 603-057-0532

Civil Penalty For A Violation Resulting From Gross Negligence or Willful Misconduct  
And On Or After June 25, 2007; Formula for Amount

(1) When the Director determines that the violation resulted from gross negligence or willful misconduct and that the violation occurred on or after June 25, 2007, the Director will determine the amount of the civil penalty using this section. To determine the amount of the civil penalty, calculate it utilizing the formula:  $NB + [(.1 \times NB) \times (P + H + C)] = \text{Penalty Amount}$  where:

(a) N = the number of times, within a period of three years prior to and including the date of the current violative act, that the person has been determined by the Director to have committed that violative act;

(b) B = the base penalty determined using the following matrix: [Matrix not included. See ED. NOTE.]

(A) The Magnitude of Violation is determined according to OAR 603-057-0525(2).

(B) The Gravity of Effect is determined according to OAR 603-057-0525(3).

(c) P = Past occurrence of unrelated violations under ORS Chapter 634 for a period of three years prior to the date of the current violative act. P will be weighted from 0 to 6 in the same manner as described in OAR 603-057-0530(1)(c).

(d) H = History of the person in taking all feasible steps or procedures necessary or appropriate to correct a violative action. H will be weighted from -2 to 2 in the same manner as described in OAR 603-057-0530(1)(d).

(e) C = Cooperativeness on the part of the person to assist the department in its investigation and to the extent possible, rectify the violation. C will be weighted from -2 to 2 in the same manner as described in OAR 603-057-0530(1)(f).

(2) If the calculation utilizing the formula in this section results in an amount more than \$10,000, the Director will assess a penalty of \$10,000. In addition, the Director may consider this adjustment if the Director remits or reduces the amount as provided in ORS 634.910 or OAR 603-057-0502(6).

[ED. NOTE: Matrix referenced is available from the agency.]

Statutory/Other Authority: ORS 561, 634 & 183.335(5)

Statutes/Other Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372 & 634.900 - 634.915

History:

DOA 5-2016, f. & cert. ef. 2-26-16

DOA 6-2009, f. & cert. ef. 5-7-09

DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09

#### 603-057-0535

#### Pesticide Use on Crops Grown for Seed Production

(1) For purposes of pesticide product registration, labeling, distribution and use, certain crops when grown exclusively for seed production with the sole intent of the seed being planted, or with the sole intent of the seed being processed to produce nonedible industrial or nonedible cosmetic oil, shall be considered nonfood/nonfeed sites. If certain conditions are met as specified in this rule, a pesticide residue tolerance is not required to obtain a pesticide registration on the crop. These crops include, but are not limited to: [Table not included. See ED. NOTE.]

(2) Certain crops which may be grown for seed production, shall be considered food/feed sites, and not eligible to obtain a nonfood/nonfeed status. These crops include, but are not limited to: Cereal Grains: including barley, buckwheat, corn, millet, oats, rye, sorghum, triticale, and wheat; Legume Vegetables (succulent and dried): including all peas, beans, chickpeas, and lentils; canola (as defined in OAR 603-052-0860(a)); garlic; potatoes; pumpkins; sunflower.

(3) If the Department receives an application for a FIFRA Section 24(c) registration or a FIFRA Section 18 authorization, and the pesticide product is intended to be used on a seed crop not listed in (1) or (2) above, additional information must be provided to the Department to support a nonfood/nonfeed designation. The Department shall make or deny the nonfood/nonfeed designation based upon evaluation of available information.

(4) In order for a pesticide product to be registered, labeled, distributed and used on a crop grown exclusively for seed production, as identified in (1) above, the following conditions must be met:

(a) The seed conditioner shall maintain a record of each pesticide applied to the seed crop for which there is no established pesticide residue tolerance. This record shall include the date of each application.

(b) No seed produced in Oregon utilizing a pesticide product for which there is no established pesticide residue tolerance on the seed crop may be distributed for human or animal consumption.

(c) All screenings resulting from a seed crop identified in (1) above shall be disposed of in such a manner that the screenings cannot be distributed or used for food or feed purposes.

(d) No portion of the seed crop to which a pesticide product having no established pesticide residue tolerance for the seed crop has been applied shall be used or distributed for food or feed. This restriction pertains to, but is not limited to, green chop, hay, pellets, meal, whole seed, cracked seed, straw, roots, bulbs, foliage or seed screenings, and to the grazing of the crop field, stubble or regrowth.

(e) The seed conditioner shall keep records of all seed screening disposals for at least three years from the date of disposal and shall furnish these records to the department upon request.

(f) The disposal records required in section (e) above shall consist of documentation verifying shipment to the controlled site where disposal occurred, and shall identify each of the following:

(A) The name, if applicable, and location of the disposal site;

(B) Method of disposal (i.e., burial, composting, or incineration);

(C) Amount and type of material disposed of; and

(D) The date of shipment to the disposal site.

(5) Administrative rules enacted and administered by the Oregon Department of Environmental Quality, contained in OAR 340-100-0010, specify that any portion of a seed crop grown in this state, its foliage, seed chaff, screenings or other crop by-products treated with a pesticide according to label instructions shall not be considered a hazardous waste. Therefore, the requirements for disposal of hazardous waste shall not apply to the disposal of a pesticide treated seed crop or its by-products.

(6) Refusing or neglecting to prepare and maintain the records required to be kept by (4)(a) and (4)(e) of this section shall be considered a prohibited act according to ORS 634.372(5).

(7) Making false, misleading or fraudulent records required by (4)(a) and (4)(e) of this section shall be considered a prohibited act according to ORS 634.372(6).

(8) Any seed from a field treated with a pesticide product having no pesticide residue tolerance shall bear specific and conspicuous container labeling, or if shipped in bulk, on the shipment invoice or bill of lading. Said labeling shall contain the following statement: "This seed was produced using one or more products for which the United States Environmental Protection Agency has not established pesticide residue tolerances. This seed, in whole, as sprouts, or in any form, may not be used for human consumption or animal feed. Failure to comply with this condition may violate requirements of the Federal Food and Drug Administration, the Oregon Department of Agriculture and other regulatory agencies."

(9) All possessors of seed labeled as specified in (8) above, including brokers and dealers, shall prepare and maintain records which include a copy of the seed labeling.

(10) The conditions contained in (1) through (9) of this rule shall not apply to a seed crop, or its by-products, grown in Oregon under the following conditions:

(a) Having no pesticide(s) applied to it; or

(b) Utilizing only pesticides registered and labeled for application to the crop, and having established residue tolerances for the specific crop and its by-products.

(11) The requirements specified in (8) and (9) of this rule shall not apply if the seed is sold or distributed in consumer packets weighing less than 5.0 oz., and is intended for retail sale and noncommercial use.

(12) The restrictions contained in (4)(d) of this rule may be modified by the Department if residue data are provided, and the data and modification are considered acceptable by both the Department and the U.S. Environmental Protection Agency.

(13) If the conditioner has not been provided information as to what pesticides were applied to a field producing a seed crop specified in (1) above, the field will be considered to have been treated with a pesticide not having a tolerance. In such situations, the seed conditioner will be exempt from the requirements of (4)(a) above. All other requirements of (4)(b) through (9) shall apply.

(14) Any seed grown in Oregon, and conditioned in another state which has a labeling requirement for seed conditioned in that state similar to (8) above, shall be exempt from the labeling requirements contained in (8) above. Seed exported from Oregon under

conditions specified in this subsection must be labeled as required in (8) above by the grower, broker or other responsible party.

(15) Any "treated seed" as defined in OAR 603-056-0431(1)(a), and meeting the labeling requirements of OAR 603-056-0431(1), shall be exempt from the labeling requirements contained in (8) above. Prior to treatment, the seed must be labeled as required in (8) above.

[ED. NOTE: Tables referenced are available from the agency.]

Statutory/Other Authority: ORS 561.190 & 634

Statutes/Other Implemented: ORS 634.306 & 634.322

History:

DOA 17-2001, f. 8-16-01, cert. ef. 1-1-02

AD 4-1993, f. & cert. ef. 2-12-93

## STATE DEPARTMENT OF AGRICULTURE

### AGRICULTURE

#### GENERAL PROVISIONS

561.005 Definitions

#### ORGANIZATION; GENERAL FUNCTIONS AND ENFORCEMENT PROVISIONS

561.010 Department created; director, appointment, confirmation and term

561.020 Responsibility of department as to inspectional, regulatory and development work

561.030 Seal; principal office; authority to acquire real property



- 561.040 Organization
- 561.050 Division chiefs
- 561.060 Salaries and bonds of employees
- 561.070 Assistants and employees; appointment, classification and duties
- 561.075 Reports to director; publications
- 561.110 Conferences between director and division chiefs; action by director
- 561.144 Department of Agriculture Service Fund; sources
- 561.150 Department of Agriculture Account
- 561.155 Cash and revolving fund
- 561.160 Approval of vouchers required before withdrawing money from State Treasury
- 561.170 Prohibited financial interests of officers or employees
- 561.177 Furnishing lists of names and other information; fee
- 561.190 Rules and regulations; publication; effect of violation
- 561.191 Program and rules relating to water quality
- 561.192 Code of regulations; compilation and publication
- 561.194 Distribution of code of regulations
- 561.200 Prohibitions against the obstruction of officers, agents or employees
- 561.220 Prohibitions against altering or removing seal or similar marking used by department and against selling products from used containers bearing such markings
- 561.230 Prohibition against reusing, imitating or counterfeiting markings used by department
- 561.240 Contracts and agreements with other agencies, governmental units and other persons; payment and receipt of funds

- 561.250 Services by department for commodity commissions, Oregon Beef Council and Oregon Wheat Commission
- 561.255 Fees for confined animal feeding operations
- 561.258 Regulation of vermiculture
- 561.265 Inspecting records of persons required to pay fees to department
- 561.275 Inspecting premises and facilities of department licensees
- 561.279 Issuance of subpoenas by department for investigations or hearings
- 561.280 Enjoining violations of law
- 561.290 Jurisdiction over prosecutions
- 561.300 Unpaid license fees; delinquent renewal penalty; notice required; collection procedure
- 561.303 Refund of excess fees or penalties; conditions; refusal to refund
- 561.305 Issuance of licenses; multiple activity license; refusal, revocation, suspension or nonrenewal of license
- 561.315 Publication of product test reports
- 561.362 Activities of Oregon State University
- 561.364 Cooperation with Oregon State University
- 561.366 Conferences to coordinate work
- 561.372 State Board of Agriculture created; member qualifications; terms
- 561.374 Compensation and expenses; organization; meetings; quorum
- 561.376 Legislative findings; State Board of Agriculture duties
- 561.378 State Board of Agriculture report
- 561.395 Soil and Water Conservation Commission; membership; compensation and expenses; forfeiture of office; functions
- 561.400 Natural Resources Division; duties; insurance for soil and water conservation districts

- 561.401 Disposition of moneys collected by Natural Resources Division
- 561.403 Extended stream bank erosion plans; division to assist in developing plans; requirements
- 561.407 Division responsible for obtaining available financing for plans

#### FURNISHING SERVICES AND MATERIALS ON CREDIT

- 561.410 Department's granting of credit; invoice; payment due date
- 561.430 Deposit or bond to secure payment
- 561.450 Lien

#### QUARANTINE POWERS

- 561.510 Quarantines; establishment by rule; content; public hearing
- 561.540 Rules and regulations governing quarantines
- 561.545 Permits for shipments of articles subject to quarantine
- 561.560 Emergency quarantine; publication of notice; powers of Governor; duration
- 561.580 Cooperation with United States and other states with respect to quarantines
- 561.585 Quarantine notice summary
- 561.590 Violation of quarantine prohibited
- 561.600 Procedure for review of orders and regulations

#### SEIZURE, DETENTION AND EMBARGO POWERS

- 561.605 Detention, seizure or embargo of agricultural products; labeling; notification
- 561.610 Request for hearing; when held
- 561.615 Conduct of hearing; action by department
- 561.620 Procedure when products disposed of; salvage
- 561.625 When hearing not required

561.630 Removing or defacing seizure or embargo notice unlawful

#### NEW CROPS DEVELOPMENT BOARD

561.700 New Crops Development Board; membership; terms; compensation and expenses

561.710 Officers; quorum; meetings

561.720 Duties; authority

561.730 Disposition of moneys received

#### BIOPHARMACEUTICAL CROPS

561.738 Definitions for ORS 561.738 and 561.740

561.740 Regulation of biopharmaceutical crops; fees

#### ANHYDROUS AMMONIA

561.750 Definitions for ORS 561.750 to 561.760

561.755 Certification of dyes or other additives; rules

561.760 Anhydrous Ammonia Additive Review Committee

#### PENALTIES

561.990 Penalties

561.993 Other penalties

561.995 Civil penalties

#### GENERAL PROVISIONS

561.005 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Board" means the State Board of Agriculture.

(2) "Department" means the State Department of Agriculture.

(3) "Director" means the Director of Agriculture. [1959 c.639 §2]

#### ORGANIZATION; GENERAL FUNCTIONS AND ENFORCEMENT PROVISIONS

561.010 Department created; director, appointment, confirmation and term. There is created a department of the government of this state to be known as the State

Department of Agriculture. The executive officer of the department shall be the Director of Agriculture who shall execute all matters pertaining to the department, subject to policy direction by the State Board of Agriculture. The director shall be appointed by the Governor, subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565, and shall serve during the pleasure of the Governor. [Amended by 1959 c.639 §3; 1973 c.792 §24; 1977 c.198 §1]

561.020 Responsibility of department as to inspectional, regulatory and development work. (1) The State Department of Agriculture shall have full responsibility and authority for all the inspectional, regulatory and market development work provided for under the provisions of all statutes which the department is empowered and directed to enforce.

(2) The department shall encourage and work toward long-range planning to develop and promote the agricultural resources of Oregon that they may contribute as greatly as possible to the future economy of the state.

(3) The Director of Agriculture shall coordinate any activities of the department related to a watershed enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.932 with activities of other cooperating state and federal agencies participating in the project.

(4) The Director of Agriculture shall conduct any activities of the department in a manner consistent with the goal set forth in ORS 468B.155. [Amended by 1955 c.572 §8; 1959 c.639 §4; 1987 c.734 §15; 1989 c.833 §62]

561.030 Seal; principal office; authority to acquire real property. (1) The State Department of Agriculture shall adopt an official seal. It shall maintain its principal office in the state capital at Salem.

(2) The department may acquire and hold, by purchase, agreement or donation, real property or any rights or interest determined actually necessary by the department for:

(a) The grading and inspection of any horticultural and agricultural products, or of any establishment or device used in the production or processing of horticultural and agricultural products;

(b) The investigation and analysis of horticultural and agricultural products, including laboratories and greenhouse or field growing areas; and

(c) The storage and maintenance of equipment, vehicles and supplies used by the department in carrying out any law under its jurisdiction.

(3) The authority granted in subsection (2) of this section does not extend to real property used or to be used as the principal administrative office of the department.

(4) As used in this section "horticultural and agricultural products" has the meaning for that term provided in ORS 632.900. [Amended by 1959 c.639 §5; 1981 c.63 §1]

561.040 Organization. Subject to policy direction by the State Board of Agriculture, the Director of Agriculture shall organize and reorganize the work of the State Department of Agriculture. [Amended by 1955 c.572 §9; 1959 c.639 §6; 1977 c.198 §2]

561.050 Division chiefs. Subject to any applicable provisions of the State Personnel Relations Law, the chiefs of the divisions shall be appointed by the Director of Agriculture. [Amended by 1959 c.639 §7]

561.060 Salaries and bonds of employees. (1) The Director of Agriculture shall execute bonds to the State of Oregon in the penal sum of \$20,000, conditioned upon the faithful performance of the duties of director.

(2) Subject to any applicable provisions of the State Personnel Relations Law, the chiefs of divisions and other employees of the State Department of Agriculture shall receive such salaries and wages as the director determines.

(3) The chiefs of divisions and other employees of the department designated by the director shall execute bonds to the state, conditioned upon the faithful performance of their duties, in such amounts as the director determines. [Amended by 1959 c.639 §8]

561.070 Assistants and employees; appointment, classification and duties. (1) The Director of Agriculture may employ veterinarians, chemists, bacteriologists and other experts, inspectors, accountants, stenographers, clerks or other help necessary to carry out efficiently the work of the State Department of Agriculture. The director may assign duties and responsibilities to each officer and employee of the department.

(2) The director may at any time designate or appoint any officer or employee of the department to act as assistant director of agriculture and may terminate such designation or appointment at any time, with or without cause. The assistant director of agriculture may perform such duties of the director as may be prescribed by the director.

(3) If the director appoints any research analysts pursuant to subsection (1) of this section, two of such research analysts may be members of unclassified service as provided in ORS chapter 240. [Amended by 1957 c.451 §1; 1967 c.208 §8]

561.075 Reports to director; publications. (1) The Director of Agriculture may call for such reports, statistics and information as the director may desire, from time to time, from any division chief or employee of the State Department of Agriculture.

(2) The director may, from time to time, cause to be published and distributed to the public in pamphlet form, or such other form as the director may deem best, such information as the director may judge to be of assistance in carrying on any of the work or purposes for the administration or for the carrying on of which the department is established.

(3) All printing of such reports, pamphlets or other literature shall be done by the Oregon Department of Administrative Services.

(4) Unless otherwise provided by law, the State Department of Agriculture may establish charges for any publication produced by it as authorized by subsection (2) of this section. Such charges shall be in amounts sufficient to cover the costs of preparation, printing, mailing and handling of each publication. [Formerly 561.180]

561.080 [Amended by 1987 c.734 §16; renumbered 561.362 in 2005]

561.090 [Renumbered 561.364 in 2005]

561.100 [Renumbered 561.366 in 2005]

561.110 Conferences between director and division chiefs; action by director. In conference with the chiefs of the divisions there shall be full and free discussion of the agricultural policies of the State Department of Agriculture, the administrative problems of divisions, the coordination of the departmental activities and methods for increasing the efficiency and reducing the cost of operation of the department. On the basis of these conferences the Director of Agriculture may take such steps as in the judgment of the director will increase the economy and efficiency of the department. The director shall give especial attention to the full utilization of stenographic, office and laboratory forces, automobiles and other equipment. The director may require that deputies and other employees do work for more than one division of the department and shall take such measures as may be necessary to avoid duplication of costs of transportation and maintenance.

561.120 [Repealed by 1959 c.639 §14]

561.130 [Amended by 1957 c.479 §1; 1959 c.639 §9; 1971 c.281 §1; 1977 c.198 §3; 2005 c.24 §3; renumbered 561.372 in 2005]

561.140 [Amended by 1957 c.479 §2; 1959 c.639 §10; 1967 c.208 §1; 1969 c.314 §64; 1971 c.281 §2; 1977 c.198 §4; 1995 c.79 §308; 2005 c.24 §4; renumbered 561.374 in 2005]

561.144 Department of Agriculture Service Fund; sources. (1) The State Treasurer shall establish a Department of Agriculture Service Fund, which shall be a trust fund separate and distinct from the General Fund. The State Department of Agriculture shall deposit all license and service fees paid to it under the provisions of the statutes identified in subsection (3) of this section in the Department of Agriculture Service Fund. The State Treasurer is the custodian of this trust fund, which shall be deposited by the treasurer in such depositories as are authorized to receive deposits of the General Fund, and which may be invested by the treasurer in the same manner as authorized by ORS 293.701 to 293.857.

(2) Interest received on deposits credited to the Department of Agriculture Service Fund shall accrue to and become a part of the Department of Agriculture Service Fund.

(3) The license and service fees subject to this section are those described in ORS 561.400, 561.740, 570.710, 571.057, 571.063, 571.145, 571.305, 586.270, 596.030, 596.100, 596.311, 599.235, 599.269, 599.406, 599.610, 601.040, 602.090, 603.025, 603.075, 616.706, 618.115, 618.136, 619.031, 621.072, 621.166, 621.266, 621.297, 621.335, 621.730, 622.080, 625.180, 628.240, 632.211, 632.600, 632.720, 632.730, 632.741, 632.940, 632.945, 633.015, 633.029, 633.318, 633.362, 633.462, 633.465, 633.680, 633.700, 633.720, 634.016, 634.116, 634.122, 634.126, 634.132, 634.136, 634.212 and 635.030. [1979 c.499 §4; 1981 c.248 §21; 1982 s.s.1 c.4 §15; 1985 c.787 §7; 1987 c.905 §36; 1991 c.624 §2; 1993 c.720 §7; 1995 c.450 §6; 1997 c.410 §2; 2001

c.21 §6; 2001 c.914 §27; 2003 c.81 §13; 2007 c.71 §177; 2007 c.577 §3; 2009 c.897 §5; 2013 c.84 §2; 2013 c.85 §3; 2013 c.118 §2; 2013 c.120 §2; 2015 c.514 §11]

561.145 [1965 c.276 §1; repealed by 1979 c.499 §1]

561.150 Department of Agriculture Account. (1) All unexpended funds that are available to the State Department of Agriculture for its use in carrying out its duties as prescribed by law and for any other purpose shall be a part of the General Fund of the state and shall be credited to a fund to be known as the Department of Agriculture Account except for:

(a) Funds to be expended for the extermination of predatory animals under the provisions of ORS chapter 610;

(b) Moneys received by the department from the sale of skins of predatory animals as provided in ORS 610.040; and

(c) Moneys received by the department that are subject to ORS 561.144.

(2) All appropriations, fees, penalties and other moneys received by the department or credited to its use from the State Treasury, except the funds named in subsection (1)(a) and (b) of this section and money required by law to be placed therein, shall be placed in the General Fund and credited to the Department of Agriculture Account.

(3) All fees, penalties and other moneys received by the department shall be turned over to the State Treasurer not later than the 10th day of the calendar month next succeeding their receipt by the department.

(4) All moneys without respect to their sources, credited to either the Department of Agriculture Account or the Department of Agriculture Service Fund shall be available for the payment of any and all the expenses of the department, excepting those incurred in connection with the extermination of predatory animals.

(5) The Director of Agriculture shall keep a record of all moneys deposited in the Department of Agriculture Account and the Department of Agriculture Service Fund. Such record shall indicate the source from which the moneys are derived and name the individual departmental activity against which each withdrawal is charged. [Amended by 1979 c.499 §2; 1999 c.59 §176; 2011 c.597 §231]

561.155 Cash and revolving fund. The State Department of Agriculture shall establish a cash and revolving fund under ORS 293.180, for the purpose of making immediate cash payments of travel and subsistence advances authorized by ORS 292.280, salary advances authorized by ORS 292.150 and other miscellaneous demand obligations authorized by law, in an amount not to exceed \$75,000 from moneys in the Department of Agriculture Service Fund. [1959 c.682 §3; 1967 c.208 §2; 1973 c.275 §1; 1979 c.183 §1; 1985 c.623 §7]

561.160 Approval of vouchers required before withdrawing money from State Treasury. All moneys drawn from the State Treasury by the State Department of Agriculture shall be drawn only after the approval of vouchers by the Director of Agriculture or by some person in the department authorized by the director to approve such vouchers, which authorization shall be in writing and filed with the Secretary of State.



561.161 [1953 c.96 §1; repealed by 1959 c.682 §4]

561.163 [1953 c.96 §4; repealed by 1959 c.682 §4]

561.165 [1953 c.96 §2; repealed by 1959 c.682 §4]

561.167 [1953 c.96 §3; repealed by 1959 c.682 §4]

561.169 [1953 c.96 §5; repealed by 1959 c.682 §4]

561.170 Prohibited financial interests of officers or employees. It shall be unlawful for the Director of Agriculture or any deputy or other employee of the State Department of Agriculture to be interested directly or indirectly as owner, agent or solicitor in the manufacture, purchase or sale of any article, commodity or product over which the director, deputy or employee may have supervision in an official capacity. It shall not be a violation of this section for the director, any deputy or other employee to own, lease or operate a ranch or farm. [Amended by 1959 c.229 §12; 1967 c.208 §9]

561.175 [1989 c.847 §9; 2001 c.248 §13; renumbered 561.255 in 2005]

561.177 Furnishing lists of names and other information; fee. The State Department of Agriculture may make a reasonable charge to cover the actual cost of accumulating and furnishing a list of names or other similar records which are by law declared to be public writings or records. Moneys collected shall be placed in the General Fund, credited to the Department of Agriculture Account and shall be available for payment of all expenses of the department. [Formerly 561.260]

561.180 [Amended by 1969 c.131 §3; 1975 c.432 §2; 1975 c.605 §29; 2001 c.539 §14; renumbered 561.075 in 2005]

561.190 Rules and regulations; publication; effect of violation. The State Department of Agriculture is authorized and directed to make any and all rules and regulations necessary for the administration or enforcement of any law with the administration or enforcement of which the department is charged, and not inconsistent with the authority with which the department is vested or with any such law. Such rules and regulations shall be compiled and printed in pamphlet form for distribution. The violation of any rule or regulation made by the department pursuant to this section shall be a violation of the law to which such rule or regulation applies and shall be punishable in the manner provided for violations of such law.

561.191 Program and rules relating to water quality. (1) The State Department of Agriculture shall develop and implement any program or rules that directly regulate farming practices, as defined in ORS 30.930, that are for the purpose of protecting water quality and that are applicable to areas of the state designated as exclusive farm use zones under ORS 215.203 or other agricultural lands in Oregon, including but not limited to rules related to:

- (a) Protection of the quality of surface or ground water;
- (b) Wellhead protection areas;
- (c) Coastal zone management areas;
- (d) Areas of ground water concern; and
- (e) Ground water management areas.

(2) Any program or rules adopted by the State Department of Agriculture under subsection (1) of this section shall be designed to assure achievement and maintenance of water quality standards adopted by the Environmental Quality Commission.

(3) If two or more state agencies are required to adopt rules under ORS 468B.150 to 468B.190, the agencies:

- (a) Shall consult with one another and coordinate the rules; and
- (b) May consolidate the rulemaking proceedings.

(4) Nothing in this section is intended to change or reduce the authority of the Water Resources Commission or the Water Resources Department under ORS chapters 536 to 543. [1995 c.690 §6a]

Note: 561.191 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 561 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

561.192 Code of regulations; compilation and publication. (1) The State Department of Agriculture may from time to time revise and compile, in a code of regulations, all rules and regulations of a general character promulgated by the department.

(2) No substantive change may be made in revising the rules and regulations unless the department complies with the procedures required by law for the adoption or amendment of the particular rule or regulation. However, changes that are not of a substantive nature may be made without the procedures required by law for the adoption or amendment of rules and regulations by the department.

(3) The department shall print, publish and distribute the code of regulations in a convenient form. The code of regulations as published is prima facie evidence of the current rules and regulations of the department. [1955 c.76 §1; 1971 c.734 §26]

561.194 Distribution of code of regulations. (1) The State Department of Agriculture may distribute the code of regulations published under ORS 561.192 free of charge to such state agencies as are designated by the department.

(2) The department shall sell the other copies at such prices as the department finds sufficient to recover the cost of printing.

(3) All moneys received by the department under this section, in addition to any other appropriation of funds available for the purposes of ORS 561.192 and 561.194, hereby are continuously appropriated to the department for the purpose of paying the cost of publication of the code of regulations. [1955 c.76 §2]

561.200 Prohibitions against the obstruction of officers, agents or employees. (1) No person, firm or corporation shall refuse to allow any authorized officer, agent or employee of the State Department of Agriculture to enter upon the premises of the

person, firm or corporation or to inspect any books, records, plant, equipment, apparatus, vehicles or any other thing or place of the person, firm or corporation which it is such officer's, agent's or employee's duty to inspect.

(2) No person, firm or corporation shall refuse to produce books, records, apparatus and equipment for the inspection of such officer, agent or employee upon demand, or refuse to allow samples to be taken by such officer, agent or employee, when they are by law authorized so to do.

(3) No person, firm or corporation shall otherwise interfere with such officer, agent or employee in the lawful exercise of duties, either by active or passive resistance or by refusal to cooperate in every reasonable manner with the officer agent or employee in the carrying out of lawful duties.

561.210 [Repealed by 1971 c.743 §432]

561.220 Prohibitions against altering or removing seal or similar marking used by department and against selling products from used containers bearing such markings. (1) Except as hereafter provided in subsections (2) and (3) of this section, no person shall alter, deface or remove any seal, sign, tag, stamp, placard, mark, brand or similar object used by the State Department of Agriculture pursuant to any law of this state.

(2) Subsection (1) of this section does not apply to:

(a) Employees or agents of the State Department of Agriculture engaged in the regular discharge of their duties.

(b) The alteration, defacement or removal of markings on any type of food or other agricultural product in the normal course of sale and distribution thereof.

(3) No person shall sell food or other agricultural products in or from a used container bearing any of the markings referred to in subsection (1) of this section unless such person first removes or defaces such markings. [1955 c.11 §1]

561.230 Prohibition against reusing, imitating or counterfeiting markings used by department. No person shall reuse, imitate or counterfeit any seal, sign, tag, stamp, placard, mark, brand or similar object used by the State Department of Agriculture pursuant to any law of this state. [1955 c.11 §2]

561.240 Contracts and agreements with other agencies, governmental units and other persons; payment and receipt of funds. (1) The State Department of Agriculture may:

(a) Enter into contracts and other agreements with, and receive funds from, any department or agency of the United States.

(b) Enter into contracts and other agreements with authorized departments and agencies of this state and other states, units of local government, Indian tribes, public and private corporations and other persons of this state, in connection with the administration of laws of this state, including but not limited to laws relating to the inspection, production, processing, marketing, testing and distribution of agricultural products and to the control or eradication of plant and animal diseases and pests.

(c) Enter into contracts with foreign governments or foreign government agencies, and contracts and other agreements with growers, handlers or other persons located outside of the United States, for the department or the foreign government, agency or person to provide services pertaining to agricultural and horticultural products or to production processes for agricultural or horticultural products, including but not limited to the inspection, production process verification, marketing, testing and distribution of agricultural or horticultural products.

(d) Receive grants from any source and may issue grants to a department or agency of this state or other states, any department or agency of the United States, a unit of local government, an Indian tribe, a public or private corporation or another person for any purpose related to the laws administered or enforced by the department.

(e) Exchange information and services with any public or private body or person described in this subsection, in order to minimize duplication of public services, investigations, inspections and audits.

(f) Receive compensation, and make payment, for services rendered in performance of contracts and other agreements authorized by this subsection.

(2) In the performance of services required by any contract or other agreement authorized by subsection (1) of this section, public agencies that are parties to the contract or agreement shall have the authority and powers of the department.

(3) Funds received by the department as provided in subsection (1) of this section shall be deposited with the State Treasurer. Such funds are continuously appropriated to the department for the use of the department in carrying out the purposes of the respective agreements, contracts, state laws and Acts of Congress in relation to which the money is received. [1957 c.478 §2; 1963 c.251 §1; 1967 c.437 §1; 1967 c.637 §§10,10a; 1993 c.21 §1; 1995 c.79 §309; 2007 c.422 §1; 2009 c.187 §1]

561.250 Services by department for commodity commissions, Oregon Beef Council and Oregon Wheat Commission. (1) Notwithstanding the provisions of ORS chapters 577 and 578, upon request of a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council created by ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030, the State Department of Agriculture may, if facilities and services are available:

(a) Provide centralized accounting, data processing, data recording, clerical, secretarial, business management, office and all other similar or related facilities and services. The department may not provide executive secretary services.

(b) Provide and furnish office space, telephone and other similar or related facilities and services.

(c) Provide for the collection and receiving of assessment or other moneys due a commodity commission, the beef council or the wheat commission. Any person authorized or required to pay an assessment or other moneys to a commodity commission, the beef council or the wheat commission shall, after notice, pay the moneys to the department in behalf of and in the name of the commodity commission, beef council or wheat commission. Moneys received by the department under this subsection shall be paid to the appropriate commodity commission, the beef council or the wheat commission.

(2) A person authorized or required to file a report or perform other actions with regard to a commodity commission, the Oregon Beef Council or the Oregon Wheat Commission shall, after notice, file the report or perform the action with regard to the department in behalf of and in the name of the commodity commission, the beef council or the wheat commission.

(3) Commodity commissions, the Oregon Beef Council and the Oregon Wheat Commission shall pay for facilities or services received under subsection (1) of this section. [1957 c.480 §§2,3,4; 1959 c.596 §69; 1959 c.685 §30; 2003 c.604 §103]

561.255 Fees for confined animal feeding operations. (1) The State Department of Agriculture shall charge the following annual permit fees to be paid under ORS 468B.215 by any persons operating the following categories of confined animal feeding operations:

- (a) Small confined animal feeding operations, \$100.
- (b) Medium confined animal feeding operations, \$200.
- (c) Large confined animal feeding operations, \$300.

(2) As used in this section:

(a) "Confined animal feeding operation" has the meaning given that term in rules adopted by the department.

(b) "Large confined animal feeding operations" has the meaning given that term in rules adopted by the department.

(c) "Medium confined animal feeding operations" has the meaning given that term in rules adopted by the department.

(d) "Small confined animal feeding operations" has the meaning given that term in rules adopted by the department. [Formerly 561.175; 2011 c.325 §1]

561.258 Regulation of vermiculture. (1) As used in this section, "vermiculture" means the commercial raising and breeding of worms for use as bait or as an animal food protein source or to produce castings.

(2) The practice of vermiculture is an agricultural activity that is subject to regulation by the State Department of Agriculture. Vermiculture products are subject to department regulation as agricultural commodities or agricultural products. [2005 c.657 §1]

Note: 561.258 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 561 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

561.260 [1959 c.229 §8; renumbered 561.177 in 2005]

561.265 Inspecting records of persons required to pay fees to department. (1) The State Department of Agriculture upon not less than three days' notice in writing is authorized to inspect and audit, during regular business hours, necessary and applicable books and records of any person required by law to report or pay fees or moneys to the department. Such inspection is for the purpose of determining whether proper fees have been paid.

(2) "Fees" as used in this section includes fees due the department by a person, each month, year, or other fixed time or period, the amount of which is based upon the quantity, volume, weight or other measurement of some article, product or commodity and such fees to be used by the department in carrying out or enforcing a law under its jurisdiction. "Fees" does not include a license fee, the exact amount of which is fixed by law. [1961 c.425 §2; 1973 c.794 §26]

561.270 [1959 c.229 §7; repealed by 1965 c.448 §4]

561.275 Inspecting premises and facilities of department licensees. Insofar as it is necessary for the State Department of Agriculture in the enforcement and carrying out of the laws under its supervision or jurisdiction, the department may, during the normal business hours of the business being inspected, inspect premises, machinery, equipment and facilities of the places or businesses subject to or required to be licensed under such laws. [1967 c.437 §5]

561.279 Issuance of subpoenas by department for investigations or hearings. The State Department of Agriculture is authorized to issue subpoenas to compel the attendance of witnesses and to require the production of pertinent books, records and documents in:

(1) Conducting an investigation of a matter with which the department specifically is charged with responsibility and that seriously affects the health of persons or animals; or

(2) Holding a hearing pursuant to the provisions of ORS chapter 183. [1967 c.437 §6; 2003 c.14 §349; 2013 c.85 §4]

561.280 Enjoining violations of law. In addition to the other remedies provided by law, the State Department of Agriculture may apply to the circuit court for, and such court shall have jurisdiction upon a summary hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of a law under the jurisdiction of the department. [1959 c.229 §9]

561.290 Jurisdiction over prosecutions. Justice courts have concurrent jurisdiction with circuit courts of all prosecutions arising under any law under the jurisdiction of the State Department of Agriculture. [1959 c.229 §10]

561.300 Unpaid license fees; delinquent renewal penalty; notice required; collection procedure. (1) The State Department of Agriculture may collect a delinquent renewal penalty for any license fee required by law under the jurisdiction of the department if the licensee has failed to renew the license before the 60th day after the license expiration date. All delinquent renewal penalties collected under this section shall be deposited in the same account as the corresponding license fee. The department shall collect the following delinquent renewal penalties:

(a) For license fees \$100 or less, \$30 or the amount of the license fee, whichever amount is less.

(b) For license fees greater than \$100, 30 percent of the amount of the license fee or \$750, whichever amount is less.

(2) Any unpaid license fee and delinquent renewal penalty required by law under the jurisdiction of the department for a prior licensing period or year continues to be owing to the department. Before taking any action or procedure against a person who should have paid a prior license fee, the department shall forward a written notice to the person by certified mail at the last-known address of the person on the records of the department advising of the amount owing. The notice shall give such person 20 days after the mailing date to pay the amount due or to present written or oral information or argument as to why the person believes the license fee is not owing. If after such period the department is of the opinion the license fee for the prior period is owing, it may then initiate such actions or procedures authorized under the applicable licensing law to collect the amount due.

(3) The provisions of subsection (2) of this section do not apply to a statute under the jurisdiction of the department if specific provisions cover collection of unpaid license fees thereunder. [1967 c.437 §4; 1993 c.536 §1]

561.303 Refund of excess fees or penalties; conditions; refusal to refund. (1) Notwithstanding the provisions of ORS 293.445 (2), the State Department of Agriculture may, upon application therefor, make refunds and determine that moneys received by the department are not due or are in excess of amounts due as fees or penalties relating to the issuance or renewal of licenses, permits, registrations or certificates under its jurisdiction, whenever:

(a) The amount received is in excess of the prescribed fee or penalty;

(b) The applicant has not or will not engage in the activity requiring the license, permit, registration or certificate or use the license, permit, registration or certificate during the time period requiring the license, permit, registration or certificate, and has:

(A) Died, or otherwise involuntarily become incapable of engaging in such activity; or

(B) Applied for a license, permit, registration or certificate under a mistake of fact as to the need therefor; or

(c) The applicant, as a condition to the issuance of a license, permit, registration or certificate, is required to meet certain personal qualifications, submit a bond, insurance certificate or other indemnity document to the department, or submit to a departmental examination, and due to causes beyond the control of the applicant cannot do so.

(2) The department may refuse refunds and determine that moneys received by the department are due as fees or penalties relating to the issuance or renewal of licenses, permits, registrations or certificates under its jurisdiction whenever:

(a) The applicant, as a condition to the issuance of a license, permit, registration or certificate, is required to submit to a departmental examination, analysis or inspection, and fails to voluntarily submit, complete or satisfactorily pass the examination, analysis or inspection;

(b) The applicant voluntarily determines not to engage in the activity requiring the license, permit, registration or certificate;

(c) The applicant has engaged in the activity requiring a license, permit, registration or certificate without having obtained a license, permit, registration or certificate,

whether or not the applicant thereafter qualified under any of the provisions of subsection (1) of this section;

(d) Other than costs of clerical processing of the application, the department has incurred costs for services performed in connection with the license, permit, registration or certificate, or application therefor;

(e) The amount subject to being refunded to the applicant under subsection (1) of this section is less than \$25; or

(f) The application for refund is not submitted to the department during the time period of the license, permit, registration or certificate. [1975 c.758 §2; 2005 c.22 §382; 2009 c.404 §1]

561.305 Issuance of licenses; multiple activity license; refusal, revocation, suspension or nonrenewal of license. (1) In order to simplify and expedite the issuance of licenses by the State Department of Agriculture, whenever practical and reasonable the department may accept a single application and issue a single license covering multiple activities of a single applicant that are required to be licensed by the department.

(2) The department may refuse to issue, refuse to renew, revoke or suspend any license or application for license issued or which may be issued pursuant to any law under its jurisdiction where it finds that the licensee has violated any provision of such law or regulations promulgated thereunder. If a single license is issued covering multiple activities, the department may refuse to issue, refuse to renew, revoke or suspend the license for any single activity covered by the license without affecting other activities covered by the license. [1959 c.229 §11; 1985 c.353 §1]

561.310 [Repealed by 1961 c.425 §20]

561.315 Publication of product test reports. (1) For the purpose of this section:

(a) "Product" means any animal, agricultural product or commodity, or any article of human or animal food, chemical or other matter that is under the supervision or jurisdiction of the State Department of Agriculture.

(b) "Test" means an analytical, chemical or microbiological test, or any other similar test or analysis performed by the department laboratories.

(2) Unless otherwise specifically provided by law, the department at least quarterly shall publish or distribute information, statistics, reports or the results of its tests of products, which show a violation of or noncompliance with a law, standard or regulation.

(3) The department shall make available a copy of the results of any test performed on a product to the owner or the person in possession of the tested product. [1969 c.131 §2]

561.320 [Repealed by 1961 c.425 §20]

561.330 [Repealed by 1961 c.425 §20]

561.340 [Repealed by 1961 c.425 §20]



561.350 [Repealed by 1961 c.425 §20]

561.360 [Repealed by 1961 c.425 §20]

561.362 Activities of Oregon State University. Oregon State University shall have full authority and responsibility:

(1) For resident instruction in all branches of agriculture.

(2) For research and experimentation in all branches and phases of agriculture as set forth in federal and state laws creating, maintaining and defining the work of the agricultural experiment stations.

(3) For educational and demonstrational work in all branches and phases of agriculture under authority of all federal and state laws creating, maintaining and defining the work of the Agricultural Extension Service.

(4) For collection and dissemination of statistical information bearing upon crop and market conditions and trends of agricultural production, including agricultural outlook reports and market news reports.

(5) To conduct educational work in the field of marketing, which includes information, advice and assistance relative to organizing and operating cooperative associations and marketing agencies, in accordance with the division of functions set forth in this chapter.

(6) For coordinating any activities of the agricultural extension service related to a watershed enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.932 with activities of other cooperating state and federal agencies participating in the project. [Formerly 561.080]

561.364 Cooperation with Oregon State University.

(1) In order to eliminate unnecessary duplication of effort and expense, there shall be the fullest cooperation between Oregon State University and the State Department of Agriculture, including the interchange of statistical information between the university and the department.

(2) If, in the interest of economy and efficiency, either temporary or permanent, it appears advisable to have any of the laboratory or statistical work of the department performed by Oregon State University, the Director of Agriculture and the director of the experiment station shall work out a cooperative plan of operation and shall agree upon such a division of the funds available for such work as may meet with the approval of the Governor. [Formerly 561.090; 2015 c.767 §181]

561.366 Conferences to coordinate work. The Director of Agriculture, the director of the agricultural experiment station and the director of the agricultural extension service of Oregon State University shall meet in conference at such times as may be necessary to eliminate any causes of overlapping and friction which may arise in connection with the conduct of their work; and they are authorized to invite representatives of collaborating federal agencies to participate in such conferences. [Formerly 561.100]

561.370 [Repealed by 1961 c.425 §20]

561.372 State Board of Agriculture created; member qualifications; terms. (1) In order that there may be the closest correspondence between State Department of Agriculture policies and programs, the public interests and the resolution of practical agricultural problems of the state, there is created the State Board of Agriculture.

(2) The Director of Agriculture, the Dean of the College of Agricultural Sciences of Oregon State University and the chairperson of the Soil and Water Conservation Commission shall serve as ex officio members of the board. The director and the dean shall be nonvoting members. The director shall act as secretary of the board. The dean may appoint a person to represent the dean on the board.

(3) The Governor shall appoint nine members to the board. The members appointed to the board must be residents of Oregon. Not more than five of the members appointed to the board may belong to the same political party. Party affiliation shall be determined by the appropriate entry on official election registration cards.

(4) The term of each member appointed to the board is four years. A member shall continue to serve until a successor is appointed and qualifies. Before a member's term expires, the Governor shall appoint a successor. If a vacancy occurs, the Governor shall appoint a person to complete the remainder of the unexpired term.

(5) A person who serves two consecutive terms on the board is not eligible for appointment to another term on the board until at least one year after the expiration of the second consecutive term.

(6) The Governor shall appoint two board members who are not actively involved in the production of agricultural commodities to be representatives of the public interests. The Governor shall appoint seven board members who are actively engaged in the production of agricultural commodities. The Governor shall seek to ensure that the appointed board members who produce agricultural commodities reflect the diverse nature of agricultural commodity production within the state. [Formerly 561.130; 2009 c.290 §1]

561.374 Compensation and expenses; organization; meetings; quorum. (1) Each member of the State Board of Agriculture may receive compensation and expenses as provided in ORS 292.495, payable from moneys appropriated or otherwise made available to the board.

(2) The board shall select a chairperson from among its voting members.

(3) The board shall meet once during each calendar quarter at a time and place determined by the chairperson. The board may hold additional meetings at times and places determined by the chairperson or the Director of Agriculture, or as requested by five or more members. A majority of the voting board members constitutes a quorum. An act by a majority of a quorum is an official act of the board.

(4) By arrangement with the chairperson, the Director of Agriculture shall review with the board the activities of the State Department of Agriculture and, subject to policy direction by the board, outline the methods, policies and program of work for the department. [Formerly 561.140]

561.376 Legislative findings; State Board of Agriculture duties. (1) The Legislative Assembly finds and declares that:

(a) Agriculture is an important component of the state economy; and

(b) The sustainability of natural resources in the state greatly affects the well-being of the residents of the state.

(2) The State Board of Agriculture shall advise the State Department of Agriculture regarding the implementation, administration and enforcement of department programs and the development of department policies designed to positively affect the agricultural industry in this state, including but not limited to programs and policies to:

(a) Address the continuing changes and adjustments in agricultural industries.

(b) Foster the natural resources of the state to provide ample opportunities for productive and beneficial agricultural enterprise.

(c) Guide the department in ensuring the viability of the agricultural industry in this state. [2005 c.24 §1]

Note: 561.376 and 561.378 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 561 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

561.378 State Board of Agriculture report. The State Board of Agriculture shall report as provided in ORS 192.230 to 192.250 on a biennial basis to the Governor and the Legislative Assembly regarding the status of the agricultural industry in this state. [2005 c.24 §2]

Note: See note under 561.376.

561.380 [Repealed by 1961 c.425 §20]

561.390 [Repealed by 1961 c.425 §20]

561.395 Soil and Water Conservation Commission; membership; compensation and expenses; forfeiture of office; functions. (1) In order that there may be the closest contact between the State Department of Agriculture and the various soil and water conservation districts in the state, and in order to keep the department advised as to matters of soil and water conservation in the state, there is created a Soil and Water Conservation Commission which shall consist of seven members appointed by the Director of Agriculture.

(2) Each member shall be a citizen of this state and a director of a soil and water conservation district at the time of appointment. As far as practicable, the Director of Agriculture shall make appointments so that geographic areas of the state are represented on the commission. The term of each member shall be four years. A member shall continue to serve until a successor is appointed and qualified. Vacancies in office shall be filled by appointment for the unexpired term.

(3) The members shall be entitled to compensation as provided in ORS 292.495. At the first meeting after July 1 of each year the commission shall select a chairperson. The commission shall meet at least four times each year on a quarterly basis, and otherwise at the call of the chairperson or the Director of Agriculture. A majority of the members shall constitute a quorum, and a majority vote of the quorum at any meeting shall constitute an official act of the commission.

(4) Any member of the commission who fails to attend three consecutive meetings of the commission, whether regular, adjourned or special, shall forfeit the office unless the member is prevented from attending by the serious illness of the member or the member's family or for any other cause that in the judgment of the director constitutes a valid reason for failing to attend. The director shall immediately appoint a successor.

(5) The function of the commission is to advise and develop policy with the department in the administration of its duties and powers under ORS 561.400, 568.210 to 568.808 and 568.900 to 568.933. [1981 c.92 §2; 2005 c.24 §5]

561.400 Natural Resources Division; duties; insurance for soil and water conservation districts. (1) There is established within the State Department of Agriculture a Natural Resources Division which shall have the duties and powers conferred by subsection (2) of this section, by ORS 568.210 to 568.808 and 568.900 to 568.933 and by the Director of Agriculture. The administrator of the division shall be appointed by the director under ORS 561.050 after consultation with the Soil and Water Conservation Commission.

(2) In addition to other duties and powers, the division is authorized:

(a) To review and approve or disapprove all projects, practices, budgets, contracts or regulations of soil and water conservation districts organized under ORS 568.300 to 568.790;

(b) To keep the directors of the soil and water conservation districts informed of the activities and experiences of other districts, to assist in the interchange of advice and information among the districts, and to promote cooperation among the districts;

(c) To coordinate, as much as possible, the various programs of the soil and water conservation districts;

(d) To solicit the cooperation and assistance of any department or agency of the United States or other department or agency of this state;

(e) To disseminate information concerning the activities and programs of soil and water conservation districts and encourage formation of such districts in areas where they would be desirable and feasible;

(f) To receive, from any source, materials, machinery and equipment and to transfer such to any soil and water conservation district under terms and conditions deemed appropriate, including payment by the district for costs of delivery or use;

(g) To receive from any public or private source, donations, gifts and grants for the furtherance of soil and water conservation, the provisions of ORS 568.225 or the protection of natural resources affecting agriculture, which moneys are continuously appropriated to the department for the administration of the Natural Resources Division and functions related thereto and for furnishing support and financial assistance for the projects and activities of soil and water conservation districts or other projects and activities relating to natural resources affecting agriculture or consistent with ORS 568.225;

(h) To establish the procedures for developing and implementing extended stream bank erosion plans under ORS 561.403;

(i) To review and evaluate documents and proposals of the federal government, agencies of the State of Oregon, counties, cities, other governmental bodies or

subdivisions thereof relating to natural resources affecting agriculture or consistent with ORS 568.225; and

(j) To conduct research in and assist in the development of agricultural management procedures and practices relating to natural resources for the prevention of soil erosion, water contamination and air pollution or for the enhancement of water quality and quantity and air quality.

(3) The administrator of the division shall coordinate any activities of the Natural Resources Division related to a watershed enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.932 with activities of other cooperating state and federal agencies participating in the project.

(4) In addition to or in lieu of the coverage provided pursuant to ORS 30.282 (4), the Oregon Department of Administrative Services may provide to soil and water conservation districts and their officers, employees and agents acting within the scope of their employment or duties, protection against liability as part of the insurance provided to the State Department of Agriculture pursuant to ORS 278.120 to 278.215. The Oregon Department of Administrative Services shall determine any additional contributions to be apportioned to the State Department of Agriculture under ORS 278.110 for extending insurance to soil and water conservation districts, and the State Department of Agriculture shall pay the assessments from such moneys as may be available therefor. [1981 c.92 §3; 1985 c.40 §4; 1985 c.667 §4; 1987 c.158 §119; 1987 c.734 §17; 1989 c.343 §1; 2005 c.175 §5; 2007 c.799 §6]

561.401 Disposition of moneys collected by Natural Resources Division. All moneys received by the Natural Resources Division under ORS 561.400 shall be paid to the State Treasurer and credited to the Department of Agriculture Service Fund established by ORS 561.144. All such moneys are continuously appropriated to the State Department of Agriculture to carry out ORS 561.400. [1991 c.624 §4]

561.403 Extended stream bank erosion plans; division to assist in developing plans; requirements. (1) Upon the request of any soil and water conservation district, flood control district or municipality, the Natural Resources Division of the State Department of Agriculture shall cooperate with the requester to develop an extended stream bank erosion plan.

(2) An extended stream bank erosion plan shall provide for the best methods of erosion control for an extended section of stream that affects all the parties that have requested the division's assistance in developing the plan.

(3) In developing an extended stream bank erosion plan, the division shall cooperate extensively with all persons or entities interested in or affected by the erosion of the stream bank, including but not limited to landowners, persons who occupy the land adjacent to the stream, flood control districts, soil and water conservation districts, municipalities and other local government units. [1985 c.667 §2]

561.407 Division responsible for obtaining available financing for plans. After completing an extended stream bank erosion plan under ORS 561.403, the Natural Resources Division, on behalf of the parties that developed the plan, shall be

responsible for obtaining all available federal funding and other assistance necessary to implement the extended stream bank erosion plan. [1985 c.667 §3]

#### FURNISHING SERVICES AND MATERIALS ON CREDIT

561.410 Department's granting of credit; invoice; payment due date. (1) The State Department of Agriculture may grant credit for services and materials furnished pursuant to the laws administered by the department.

(2) The department shall prepare an itemized invoice of the services and materials furnished by the department and send the invoice to the person responsible for payment. The amount owing by the person is due and payable to the department on or before the 30th day after the date of the invoice. [1959 c.229 §2; 1963 c.373 §1; 2003 c.641 §1]

561.420 [1959 c.229 §3; repealed by 1963 c.373 §2]

561.430 Deposit or bond to secure payment. (1) The State Department of Agriculture may require any person to whom it has furnished or may furnish services or materials on credit to deposit and keep on deposit with the department a sum equal to an amount which the department estimates may be due for services or materials to be rendered for a period of three months.

(2) The department may, in lieu of such deposit, accept a bond to secure payment for services or materials to be furnished. The deposit or posting of the bond shall not relieve the person from making payments as required by law or by ORS 561.410.

(3) If such person files a written statement with the department that services or materials of the department are no longer required, the department, upon receipt of all payments due, shall refund to the person all deposits remaining to the person's credit and shall cancel any bond given under this section. [1959 c.229 §5]

561.440 [1959 c.229 §4; repealed by 1961 c.425 §20]

561.450 Lien. (1) A lien hereby is created in favor of the State Department of Agriculture upon all real and personal property belonging to any person who fails to pay the department for services or materials furnished within 60 days after the due date in a sum equal to the amount due.

(2) The lien, which shall be valid until paid in full, attaches upon the filing of a Notice of Claim of Lien with the county clerk of the county in which the property is located. The notice of lien claim shall contain a true statement of the amount due. The county clerk shall record the claim of lien and shall receive the same fees as are allowed by law for recording other lien instruments.

(3) The lien created by this section may be foreclosed in the circuit court in the same manner provided by law for the foreclosure of other liens on real or personal property.

(4) The lien created by this section is prior to all liens and encumbrances recorded subsequent to the filing of claim of lien, except taxes and labor liens. [1959 c.229 §6; 1961 c.425 §3]

## QUARANTINE POWERS

561.510 Quarantines; establishment by rule; content; public hearing. (1) The Director of Agriculture may adopt rules under ORS chapter 183 declaring a quarantine if the director believes that any animals, fowls, bees, fruits, vegetables, plants, parts of plants or seeds within any area or section are diseased or infested with a pest, or that any area or section is infested with a weed, and that the disease, infestation or weed is likely to spread and become detrimental to the plant or animal life of this state or to the health of citizens of the state. The director may declare the quarantine for any area or section for which the Secretary of Agriculture of the United States has not determined that a quarantine is necessary and established a quarantine. The quarantine may prohibit:

(a) The movement of diseased or infested animals, fowls, bees, fruits, vegetables, plants, parts of plants or seeds or of weeds or weed seeds; or

(b) Articles that might contain the disease, infestation, weeds or weed seeds or that might otherwise spread the disease, infestation or weeds into the state from outside the state or from one area or section of the state to another area or section within or outside the state.

(2) Except as provided in subsection (3) of this section, the director shall hold at least one public hearing in this state before adopting a rule that declares a quarantine under this section.

(3) If an emergency exists and postponement of the effective date of the quarantine would result in serious prejudice to the public health, safety or welfare, or to the health, safety or welfare of the affected parties, the director may make the quarantine effective immediately as authorized by ORS 183.355 (3)(b). [Amended by 2009 c.98 §18; 2017 c.518 §8]

561.520 [Amended by 1961 c.118 §1; 1971 c.734 §27; 2005 c.22 §383; repealed by 2009 c.98 §31]

561.530 [Repealed by 2009 c.98 §31]

561.540 Rules and regulations governing quarantines. (1) A quarantine authorized by ORS 561.510 shall be subject to such rules and regulations as the Director of Agriculture deems necessary for the protection of the public welfare.

(2) The movement of any animals, bees, fruits, vegetables, plants, parts of plants, fowls, seeds or articles liable to contain weeds or weed seeds or to spread disease or infestation, which are subject to quarantine, may be permitted subject to such regulations as the director may prescribe.

(3) Any such diseased or infested animals, fowls, bees, fruits, vegetables, plants, parts of plants, seeds, weeds, weed seeds and any articles, structures or lands within any quarantine area or section within this state shall be subject to such regulations for the eradication of such disease, infestation or weeds as the director may prescribe.

561.545 Permits for shipments of articles subject to quarantine. The State Department of Agriculture may preapprove and issue permits for shipments of articles

that are subject to a quarantine if the department finds that the articles are subject to appropriate mitigation tactics or strategies that can be enforced at the point of origin for the shipment. The department may also permit and preapprove articles that are subject to department control methods adopted by rule under ORS 570.210 or to product grades, standards or classifications adopted by the department under ORS 632.900 to 632.940, if the department finds that the articles are subject to appropriate inspection programs at the point of origin for the shipment. [2009 c.98 §2]

Note: 561.545 was added to and made a part of ORS chapter 561 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

561.550 [Repealed by 2009 c.98 §31]

561.560 Emergency quarantine; publication of notice; powers of Governor; duration. (1) The Director of Agriculture shall issue a written order declaring a quarantine if the director determines that:

(a) A disease or an infestation has a significantly adverse effect on plants, animals, fowls or bees;

(b) The disease or infestation is not widely prevalent or distributed within this state;

(c) The disease or infestation exists in another state, territory or country or in any locality within this state; and

(d) Following the procedure for declaring a quarantine by rule under ORS 561.510 would create a serious danger of the disease or infestation spreading within the state during the time required by the procedure.

(2) The written order declaring the quarantine shall prohibit the movement into or within the state of any plants, animals, fowls, bees or articles that are likely to spread the disease or infestation. The director may amend the order as the director considers necessary. The director shall sign the written order and any amendments to the order.

(3) The director shall file all quarantine orders and amendments to the orders with the Secretary of State. The director shall give notice of the quarantine orders and amendments to the orders by publication in a newspaper of general circulation in the quarantine area and by one or more additional methods that reasonably ensure that affected persons and other members of the public have knowledge of the quarantine order or amendment. A quarantine order or amendment to an order is effective upon filing with the Secretary of State. A person may not carry, move or transport any plants, animals, fowls, bees or articles specified in a quarantine order or amendment from the quarantined area into or through any part of the state, except as provided in the order or amendment. The State Department of Agriculture shall keep a record of the methods used to provide notice under this subsection for each quarantine order or amendment to an order.

(4) A quarantine created by a written order issued under this section may not remain in effect more than 180 days after the first publication of notice under subsection (3) of this section. However, a quarantine for a longer period may be declared under ORS 561.510, to take effect at or before the expiration of the 180-day period.



(5) The Governor by filing an order with the Secretary of State may terminate a quarantine ordered by the director under this section. If the Governor terminates a quarantine under this subsection, the director must obtain the approval of the Governor before issuing any additional quarantine order or amendments under this section for the same disease or infestation. [Amended by 1969 c.150 §1; 1971 c.734 §85; 2009 c.98 §19; 2015 c.203 §1]

561.570 [Renumbered 561.810]

561.580 Cooperation with United States and other states with respect to quarantines. (1) In order to prevent unnecessary and conflicting regulations on commerce, the State Department of Agriculture shall cooperate with the United States and other states in establishing a uniform system of quarantine and laws and rules and regulations governing quarantines, both as to animals, fowls, plants, insects and other plant pests and seeds, subject to quarantine, manner of enforcing quarantine and manner of treating infested animals, fowls, plants, seeds and articles containing insects or other plant pests. As used in this section, "plant pests" has the meaning given that term in ORS 570.001.

(2) The Director of Agriculture shall suggest to the Governor, from time to time, any changes in the laws of this state or any additional laws that will tend to unify the quarantine laws of the United States, this state and other states of the United States.

(3) Whenever the director deems it to be of advantage toward carrying out the purpose of this section, the director may forward to the United States Department of Agriculture copies of proposed rules and regulations to govern quarantines in this state and request suggestions from the United States Department of Agriculture tending toward uniform provisions governing quarantines throughout the several states. [Amended by 2015 c.203 §2]

561.585 Quarantine notice summary. When the State Department of Agriculture is required to give notice of an order of quarantine or rules pertaining to a quarantine by publication in a newspaper, or by the use of one or more methods in addition to publication in a newspaper, the department may at its discretion satisfy the notice requirement by providing a brief concise summary statement of the contents of the order or rules and notice that complete copies of the order or rules are on file and can be obtained from the department and the Secretary of State. [1961 c.118 §3; 2015 c.203 §3]

561.590 Violation of quarantine prohibited. From and after the time that any quarantine order of the Director of Agriculture becomes effective it shall be unlawful for any person, firm or corporation to violate, either in whole or in part, any of the provisions of such order, or of any rule or regulation promulgated in connection therewith.

561.600 Procedure for review of orders and regulations. Judicial review of orders including emergency orders and regulations issued in accordance with ORS 561.510 to 561.590 shall be as provided in ORS chapter 183. [1971 c.734 §87]

## SEIZURE, DETENTION AND EMBARGO POWERS

561.605 Detention, seizure or embargo of agricultural products; labeling; notification. (1) In order that the rights of consumers, property owners or other affected persons may be protected and procedures made uniform the State Department of Agriculture, its agents, employees or officials, shall observe the procedure prescribed by ORS 561.605 to 561.620 whenever it becomes necessary for the department to detain, seize or embargo any food, article or product under any law the administration of which is vested in the department.

(2) The department shall cause to be affixed to the products being detained, seized or embargoed, a notice that the products are being detained, seized or embargoed by the department and warning all persons that they may not be removed from the place at which they are being held without written permission from the department.

(3) The department shall notify in writing the owner or person in possession of the products that the products are being detained, seized or embargoed by the department. If the person in possession of the products is not the owner, the department shall make a reasonable effort to notify the owner. Such notice shall state the reason for the department's action, and shall notify the owner or person in possession of the right to be heard before the department in opposition to the action. [Formerly part of 616.095]

561.610 Request for hearing; when held. (1) A request of the State Department of Agriculture for a hearing on the propriety of the detention, seizure or embargo and related matters must be filed with the department in writing within 10 days of receiving actual notice of such action. The request may be filed either by the owner or the person in possession but the time limited for filing such request is to be computed from the time the required notice is first received by either of such persons. When the department receives a request for a hearing, it shall designate the time and place of hearing.

(2) The hearing shall not be held sooner than 10 days after the request for a hearing has been received by the department. However, if the subject matter of the department's action is perishable goods, or if, in the opinion of the department, other good and sufficient reason appears, the hearing may, at the request of the owner or person in possession of such goods, be held at an earlier date. [Formerly part of 616.095]

561.615 Conduct of hearing; action by department. (1) The hearing shall be conducted by an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605. The hearing shall be conducted as provided for contested cases under ORS chapter 183.

(2) If it appears that the products are not being stored, sold, kept, offered or exposed for sale in violation of law, the products shall be released to the owner or person in possession. If it appears that all or part of such products may be reconditioned or relabeled or segregated in such a way as to comply with state laws, the owner or person in possession may cause them to be reconditioned, relabeled or segregated at the owner's or person's own expense, after which the department shall release them. If it appears that all or a part of the products may not be reconditioned, relabeled or segregated in such a way as to comply with state laws, that portion of the

products which may not be so treated shall be destroyed, unless the owner or person in possession executes and delivers to the department a good and sufficient bond to the effect that the products shall not be sold, disposed of or used contrary to the laws of Oregon and the rules, regulations or orders thereunder promulgated. If any food products are found to be unfit for human consumption but suitable for animal feeding, such food products may be used for animal feeding as permitted by the department. [Formerly part of 616.095; 1971 c.734 §88; 1999 c.849 §§119,120; 2003 c.75 §47]

561.620 Procedure when products disposed of; salvage. (1) In the event that the owner or person in possession does not request a hearing on the propriety of the seizure, detention or embargo within the time limited for making such request, the State Department of Agriculture may summarily destroy or otherwise dispose of the subject matter of the action, or, if the owner or person in possession of such products does not within 30 days after the hearing either comply with the orders of the department as to reconditioning, relabeling or segregating or perfect an appeal to the circuit court, the department may summarily destroy or otherwise dispose of the subject matter of the action.

(2) If it appears to the department that there is a reasonable possibility that a product is capable of salvage and the owner or person in possession does not seek to regain custody within the time and in the manner provided in ORS 561.605 to 561.620, the department may dispose of the product so as to obtain such salvage. Any salvage so recovered shall, after paying the costs of sale or disposition and including storage, if any, be remitted to the true owner, if known, or if not known, then to the person in possession. A sale or disposition for salvage shall be upon such conditions as to labeling, reconditioning or segregation as the department deems necessary to comply with the law relating to such product. [Formerly part of 616.095]

561.625 When hearing not required. Nothing in ORS 561.605 to 561.630, 616.225, 632.485 and 633.670 shall be construed as requiring that a hearing be held in connection with the seizure or embargoing of illegal or suspected products or as prohibiting the release, destruction or other disposition of such products by agreement between the State Department of Agriculture and the owner or person in possession of such products. [Subsection (1) of 1965 Replacement Part formerly 616.100; subsection (2) of 1965 Replacement Part formerly part of 616.095; 1967 c.437 §2]

561.630 Removing or defacing seizure or embargo notice unlawful. No person shall remove or deface any notice placed upon products seized or embargoed by the State Department of Agriculture, or move any such products from the place designated in the notice without written permission from the department. [Formerly 616.110]

561.650 [1985 c.620 §2; renumbered 569.600 in 2009]

561.660 [1985 c.620 §4; renumbered 569.605 in 2009]

561.670 [1985 c.620 §5; renumbered 569.610 in 2009]

561.680 [1985 c.620 §6; 2005 c.392 §2; 2009 c.98 §20; renumbered 569.615 in 2009]

561.683 [2005 c.392 §1; renumbered 569.620 in 2009]

561.685 [2001 c.413 §6; 2009 c.100 §1; renumbered 570.755 in 2009]

561.687 [2001 c.413 §1; 2007 c.247 §1; 2009 c.100 §2; renumbered 570.770 in 2009]

561.689 [2001 c.413 §3; 2007 c.247 §2; renumbered 570.775 in 2009]

561.691 [2001 c.413 §4; 2007 c.247 §3; 2009 c.100 §4; renumbered 570.780 in 2009]

561.693 [2001 c.413 §5; renumbered 570.790 in 2009]

561.695 [2001 c.413 §7; renumbered 570.800 in 2009]

#### NEW CROPS DEVELOPMENT BOARD

561.700 New Crops Development Board; membership; terms; compensation and expenses. (1) The New Crops Development Board is created within the State Department of Agriculture. The board shall consist of nine voting members appointed by the Director of Agriculture. In addition to the voting members, the Director of the Oregon State University Experiment Station or the designee of the director and the Director of the Department of Environmental Quality or the designee of the director shall be nonvoting ex officio members of the board.

(2) The term of each voting member is four years, but a member serves at the pleasure of the Director of Agriculture. Before the expiration of the term of a voting member, the director shall appoint a successor. A voting member is eligible for reappointment. If there is a vacancy for any cause, the director shall make an appointment to become immediately effective for the unexpired term.

(3) Each voting member of the board shall be a citizen of this state and actively engaged in some segment of the agricultural crop industry. As far as practicable, the Director of Agriculture shall make appointments so that the various geographic areas of the state and segments of the agricultural crop industry are represented on the board.

(4) To the extent that moneys received pursuant to ORS 561.720 are available therefor in the Department of Agriculture Service Fund, a member of the board is entitled to compensation and expenses as provided in ORS 292.495. [1983 c.501 §2]

561.710 Officers; quorum; meetings. (1) The New Crops Development Board shall select one of its members as chairperson and another as vice chairperson, for such terms and with such duties and powers necessary for the performance of the functions of such offices as the board determines.

(2) A majority of the voting members of the board constitutes a quorum for the transaction of business.

(3) The board shall meet at such times and places as may be specified by the call of the chairperson or of a majority of the voting members of the board. [1983 c.501 §3]

561.720 Duties; authority. In order to facilitate research and development of new or alternative crops in this state and to implement the responsibilities of the State Department of Agriculture under ORS 561.020 (2), the New Crops Development Board:

(1) Shall review new or alternative agricultural crops research or development proposals, and for this purpose may consult with the appropriate persons in universities, research institutions, business enterprises or other public or private bodies.

(2) May accept contributions, gifts or grants from any public or private source.

(3) May make grants and disbursements of funds to, and enter into agreements with, public or private agencies, schools, organizations, institutions or individuals, for the research, study, experimentation or development of new or alternative crop production, processing or uses.

(4) Shall review and evaluate the results of all grants and agreements.

(5) May act as a clearinghouse for information and reports involving the research, study, experimentation or development of new or alternative crop production, processing, markets or uses.

(6) May act as liaison between those engaged in the research, study, experimentation or development of new or alternative crop production, processing, markets or uses. [1983 c.501 §4; 1985 c.623 §8]

561.730 Disposition of moneys received. All moneys received by the New Crops Development Board shall be deposited in the Department of Agriculture Service Fund created by ORS 561.144 (1). All moneys received and so deposited are continuously appropriated to the board to carry out the provisions of ORS 561.700 to 561.720. [1983 c.501 §5]

## BIOPHARMACEUTICAL CROPS

561.738 Definitions for ORS 561.738 and 561.740. As used in this section and ORS 561.740:

(1) "Biopharm permit" means a permit issued by the United States Department of Agriculture for the production of a biopharmaceutical crop.

(2) "Biopharmaceutical crops" means plants that have been genetically modified using a recombinant DNA process to produce vaccines, drugs, enzymes or other medicinal compounds.

(3) "Recombinant DNA process" means a process in which segments of deoxyribonucleic acid from different organisms are joined together to create recombinant DNA molecules that have the capacity to replicate in some host cell, either autonomously or as an integrated part of the host genome. [2007 c.577 §1]

Note: 561.738 and 561.740 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 561 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

561.740 Regulation of biopharmaceutical crops; fees. (1) The Director of Agriculture and an appointee of the Director of the Oregon Health Authority who has experience in health program administration may enter into memoranda of understanding or other intergovernmental agreements on behalf of this state for the purpose of furthering collaboration between this state and federal agencies that regulate the growing of biopharmaceutical crops. A memorandum or other agreement entered into under this section shall be designed to increase state input to the federal biopharm permitting system on biopharmaceutical crop issues and requirements of specific interest to this state.

(2) To the extent authorized under federal and state law, or under any memorandum of understanding or other agreement entered into under subsection (1) of this section, the Director of Agriculture and the appointee of the Director of the Oregon Health Authority, or their designees:

(a) Notwithstanding ORS 192.311 to 192.478, shall refuse to disclose any biopharm permit application or related biopharmaceutical crop information received from the United States Department of Agriculture's Animal and Plant Health Inspection Service, or from any successor to that service, that the United States Department of Agriculture has determined to be confidential business information.

(b) May review biopharm permit applications and biopharmaceutical crop information submitted to the United States Department of Agriculture.

(c) May administer and conduct site inspections and monitoring of any biopharmaceutical crops grown in Oregon.

(d) If there is evidence that biopharmaceutical crops are endangering Oregon agriculture, horticulture or forest production or public health, may take appropriate enforcement action.

(e) May charge a biopharm permit applicant or holder fees for state oversight, services or activities under this section. Fees charged under this paragraph may not total more than \$10,000 and must be reasonably calculated to reimburse the state for the actual cost of the oversight, services or activities. Fees collected under this paragraph shall be deposited to the credit of the Department of Agriculture Service Fund and are continuously appropriated to the State Department of Agriculture for the purpose of carrying out this section. [2007 c.577 §2; 2009 c.595 §989]

Note: See note under 561.738.

## ANHYDROUS AMMONIA

561.750 Definitions for ORS 561.750 to 561.760. As used in ORS 561.750 to 561.760:

(1) "Anhydrous ammonia":

(a) Means a liquid or gaseous inorganic compound that is formed by the chemical combination of nitrogen and hydrogen in the molar proportion of one part nitrogen to three parts hydrogen.

(b) Does not mean ammonium hydroxide.

(2) "Distributor" means a person that imports, consigns, sells, offers for sale, barter, exchanges or otherwise facilitates the supply of anhydrous ammonia to a user in this state.

(3) "Nontoxic dye" means a biodegradable, clear liquid product that causes staining when exposed to air.

(4) "Other additive" means a product other than a nontoxic dye that, when put in tanks containing anhydrous ammonia, renders the anhydrous ammonia nonreactive, unusable or undesirable for use as a precursor substance in the manufacture of methamphetamine.

(5) "User" means a person that applies anhydrous ammonia as a plant nutrient in the course of engaging in agricultural activity in this state. [2005 c.706 §19]

Note: 561.750 to 561.760 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 561 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

561.755 Certification of dyes or other additives; rules. (1) The State Department of Agriculture, by rule and in consultation with the Department of State Police, shall certify each brand of nontoxic dye or other additive that a distributor or user may add to anhydrous ammonia.

(2) In accordance with applicable provisions of ORS chapter 183, the State Department of Agriculture shall adopt rules establishing standards to be used in making certifications under this section and for the administration of ORS 561.760. In establishing the standards, the State Department of Agriculture shall consult with the Anhydrous Ammonia Additive Review Committee established under ORS 561.760. [2005 c.706 §20]

Note: See note under 561.750.

561.760 Anhydrous Ammonia Additive Review Committee. (1) The Director of Agriculture, in consultation with the Superintendent of State Police, shall appoint an Anhydrous Ammonia Additive Review Committee consisting of not fewer than six members. The term of a member is four years, but a member serves at the pleasure of the director.

(2) Members of the committee are not entitled to compensation, but in the discretion of the director may be reimbursed from funds available to the State Department of Agriculture for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amount provided in ORS 292.495.

(3) The members of the committee shall include at least one representative from each of the following:

(a) The Department of State Police.

(b) The State Department of Agriculture.

- (c) Manufacturers of anhydrous ammonia fertilizers.
- (d) The Oregon State University Extension Service.
- (e) Retail distributors.
- (f) Users who are growers of agricultural commodities.
- (4) The committee:

(a) May review all relevant scientific and economic data on nontoxic dyes or other additives for anhydrous ammonia that are submitted for certification to the State Department of Agriculture under ORS 561.755.

(b) Shall, at a minimum, require the manufacturer of any product submitted under ORS 561.755 to provide sufficient scientifically valid data for each submitted nontoxic dye or other additive to allow the State Department of Agriculture to determine the dye's or additive's:

- (A) Impact on crop yield;
- (B) Specific food crop residue analysis; and
- (C) Impact on the environment.

(c) May issue recommendations to the director regarding whether a nontoxic dye or other additive to anhydrous ammonia should be certified by the State Department of Agriculture under ORS 561.755. [2005 c.706 §21]

Note: See note under 561.750.

561.810 [Formerly 561.570; repealed by 1961 c.425 §20]

## PENALTIES

561.990 Penalties. (1) Violation of ORS 561.170 is a Class C violation.

(2) Violation of ORS 561.200 is a Class C misdemeanor.

(3) Violation of ORS 561.220 or 561.230 is a Class A misdemeanor.

(4) Violation of ORS 561.590 is a specific fine violation punishable by a fine of not more than \$5,000. [Subsection (3) enacted as 1955 c.11 §3; subsection (5) formerly part of 616.990 and removed by 2009 amendment; 1971 c.743 §399; 1973 c.10 §1; 1999 c.1051 §199; 2009 c.98 §21; 2011 c.597 §232]

561.993 Other penalties. Violation of a provision of ORS 561.605 to 561.630 is a Class D violation. [2009 c.98 §9(2)]

Note: 561.993 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 561 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

561.995 Civil penalties. (1) In addition to any fine under ORS 561.990 or other penalty, a person who violates an order, rule or regulation described under ORS 561.590 is subject to a civil penalty imposed by the State Department of Agriculture. The civil penalty shall not exceed \$10,000.

(2) Every violation of an order, rule or regulation described under ORS 561.590 is a separate offense subject to a separate civil penalty.



(3) The department shall develop one or more schedules setting the amounts of civil penalties that may be imposed for particular types of violations.

(4) The imposition of a civil penalty under this section is subject to ORS 183.745.

(5) The State Treasurer shall deposit all moneys from penalties recovered under this section into the Department of Agriculture Account. Moneys deposited under this subsection are continuously appropriated to the department for the administration and enforcement of quarantine laws. [1999 c.390 §2]

Oregon Constitution, Article 1:

Section 9. Unreasonable searches or seizures. No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.